
C O U N T E R - T E R R O R I S M O R D I N A N C E 2 0 1 6

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C O U N T E R - T E R R O R I S M O R D I N A N C E 2 0 1 6

An Ordinance to make provision for terrorist-related offences and for powers to counter a terrorist threat

M. Wigston
ADMINISTRATOR

12 June 2016

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

PART 1

Preliminary

Short title

1. This Ordinance may be cited as the Counter-Terrorism Ordinance 2016.

Commencement

2. This Ordinance comes into force on 1 July 2016.

PART 2

Interpretation

Terrorism: interpretation

- 3.—(1) In this Ordinance, “terrorism” means the use or threat of action where—
 - (a) the action falls within subsection (2);
 - (b) the use or threat is designed to influence 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.
- (2) Action falls within this subsection if it—
 - (a) involves serious violence against a person;
 - (b) involves serious damage to property;
 - (c) endangers a person’s life, other than that of the person committing the action;
 - (d) creates a serious risk to the health or safety of the public or a section of the public; or
 - (e) is designed to seriously interfere with or seriously disrupt an electronic system.
- (3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.

(4) In this section—

- (a) “action” includes action outside the Areas;
- (b) a reference to any person or to property is a reference to any person, or to property, wherever situated;
- (c) a reference to the public includes a reference to the public of a country or territory other than the Areas;
- (d) "the government" means the Administration of the Areas or of a country or territory other than the Areas.

(5) In this Ordinance, a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organisation.

Proscribed organisation

4.—(1) For the purposes of this Ordinance, an organisation is a proscribed organisation if it is—

- (a) listed in Schedule 2 to the Terrorist Act 2000 (the “Act”)(a); or
- (b) it operates under the same name as an organisation listed in that Schedule.

(2) In this section, a reference to Schedule 2 includes amendments to Schedule 2 however made, and whether made before or after this Ordinance comes into force.

Terrorist: interpretation

5.—(1) In this Ordinance “terrorist” means a person who—

- (a) has committed an offence under Part 3 (offences);
- (b) has committed an offence under any of sections 11, 12, 15 to 18, 54 and 56 to 63 of the Terrorism Act 2000 whether before or after this Ordinance comes into force; or
- (c) is or has been concerned in the commission, preparation or instigation of acts of terrorism.

(2) The reference in subsection (1)(c) 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 this Ordinance comes into force, concerned in the commission, preparation or instigation of acts of terrorism within the meaning given by section 3.

Terrorist property: interpretation

6.—(1) In this Ordinance, "terrorist property" means—

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

(2) In subsection (1)—

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

(a) 2000 c.11 UK Act of Parliament.

Interpretation: other defined words and expressions

7. In this Ordinance—

“act” and “action” include omission;

“article” includes substance and any other thing;

“code of practice” or “code” means the code of practice issued under section 28 including the code as altered or replaced under section 29;

“driver”, includes—

- (a) any person actually driving a vehicle at any given time;
- (b) any person in charge of it for the purpose of driving whenever the vehicle is stationary on any road;
- (c) in relation to a trailer, the driver of the vehicle by which the trailer is drawn; and
- (d) in relation to an aircraft, hovercraft or vessel, the captain, pilot or other person with control of the aircraft, hovercraft or vessel or any member of its crew;

“explosive substance” has the meaning given in section 2 of the Explosive Substances Ordinance(a);

“firearm” has the meaning given in the Firearms and Other Weapons Ordinance 2009(b);

“judge” means a member of the Resident Judge’s Court, or, as the case may be, the Senior Judges’ Court;

“organisation” includes any association or combination of persons;

“premises” includes any place and, in particular, includes—

- (a) a vehicle;
- (b) a tent or moveable structure;

“property” includes property wherever situated and whether real or personal, heritable or moveable, and things in action and other intangible or incorporeal property;

“vehicle” includes aircraft, hovercraft, vessel, animal, cycle and any other vehicle (whether motorised or not) used to convey goods or persons.

PART 3

Offences

Membership

8.—(1) A person commits an offence if the person belongs or professes to belong to a proscribed organisation.

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

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

(3) A person guilty of an offence under this section is liable on conviction to imprisonment for a term not exceeding 10 years, to a fine or to both.

(a) Cap. 54, Laws of Cyprus (1959 ed.). Legislation of the former colony of Cyprus has effect in the Areas by virtue of article 5 of the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (SI 1960/1369 (UK)). Schedule 2 to the Interpretation Ordinance 2012 makes provision for the interpretation of such legislation.

(b) Ordinance 21/2009. Firearm is interpreted in accordance with Schedule 1 to that Ordinance. Schedule 1 was amended by Ordinance 6/2012.

(4) In subsection (2), "proscribed" means proscribed for the purposes of this Ordinance.

Support

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

- (a) the person invites support for a proscribed organisation; and
- (b) the support is not, or is not restricted to, the provision of money or other property.

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

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

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

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

(5) In subsections (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 section is liable on conviction to imprisonment for a term not exceeding 10 years, to a fine or to both.

Fund-raising

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

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

(2) A person commits an offence if the person—

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

(3) A person commits an offence if the person—

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

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

Use and possession

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

(2) A person commits an offence if the person—

- (a) possesses money or other 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.

Funding arrangements

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

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

Money laundering

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

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

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

Penalties

14. A person guilty of an offence under any of sections 10 to 13 is liable on conviction to imprisonment for a term not exceeding 14 years, to a fine or to both.

Weapons training

15.—(1) A person commits an offence if the person 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) explosive substances; or
- (d) chemical, biological or nuclear weapons.

(2) A person commits an offence if the person 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) explosive substances; or
- (d) chemical, biological or nuclear weapons.

(3) A person commits an offence if the person invites another to receive instruction or training and the receipt would constitute an offence under subsection (2).

(4) For the purpose of subsections (1) and (3)—

- (a) a reference to the provision of instruction includes a reference to making it available either generally or to one or more specific persons; and

- (b) an invitation to receive instruction or training may be either general or addressed to one or more specific persons.

(5) It is a defence for a person charged with an offence under this section in relation to instruction or training to prove that the person's action or involvement was wholly for a purpose other than assisting, preparing or participating in terrorism.

(6) A person guilty of an offence under this section is liable on conviction to imprisonment for a term not exceeding 10 years, to a fine or to both.

Weapons training: interpretation

16. In section 15—

- (a) “biological weapon” means a biological agent or toxin within the meaning of the Biological Weapons Act 1974(a), in a form capable of use for hostile purposes or anything to which section 1(1)(b) of that Act applies;
- (b) “chemical weapon” has the meaning given by section 1 of the Chemical Weapons Act 1996(b);
- (c) “radioactive material” means radioactive material capable of endangering life or causing harm to human health.

Directing terrorist organisation

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

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

Possession for terrorist purposes

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

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

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

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

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

(4) A person guilty of an offence under this section is liable on conviction, to imprisonment for a term not exceeding 15 years, to a fine or to both.

Collection of information

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

- (a) the person 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) the person possesses a document or record containing information of that kind.

(a) 1974 c. 6 UK Act of Parliament.

(b) 1996 c. 6 UK Act of Parliament.

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

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

(4) A person guilty of an offence under this section is liable on conviction, to imprisonment for a term not exceeding 10 years, to a fine or to both.

Eliciting, publishing or communicating information about members of armed forces, etc.

20.—(1) A person commits an offence who—

(a) elicits or attempts to elicit information about an individual who is or has been—

- (i) a member of Her Majesty's armed forces,
- (ii) a member of any of the intelligence services, or
- (iii) a police officer,

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

(b) publishes or communicates any such information.

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

(3) A person guilty of an offence under this section is liable on conviction, to imprisonment for a term not exceeding 10 years or to a fine, or to both.

(4) In this section, “the intelligence services” means—

- (a) GCHQ (within the meaning of section 3 of the Intelligence Services Act 1994^(a));
- (b) the Secret Intelligence Service (within the meaning of section 1 of the Intelligence Services Act 1994);
- (c) the Security Service (within the meaning of section 1 of the Security Service Act 1989^(b)).

Inciting terrorism outside the Areas

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

- (a) in the Areas, the person incites another person to commit an act of terrorism wholly or partly outside the Areas; and
- (b) the act would, if committed in the Areas, constitute one of the offences listed in subsection (2).

(2) Those offences are the following offence under the Criminal Code^(c)—

- (a) section 203^(d) (premeditated murder);
- (b) section 228 (acts intended to cause grievous harm or prevent arrest);
- (c) section 232 (attempting to injure by explosive substances);
- (d) section 233 (maliciously administering poison with intent to harm);
- (e) section 315^(e) (arson);
- (f) section 325 (attempts to destroy property by explosives).

(a) 1994 c.13 UK Act of Parliament.

(b) 1989 c.5 UK Act of Parliament.

(c) Cap. 154, Laws of Cyprus (1959 ed.). Legislation of the former colony of Cyprus has effect in the Areas by virtue of article 5 of the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (SI 1960/1369 (UK)). Schedule 2 to the Interpretation Ordinance 2012 makes provision for the interpretation of such legislation.

(d) Section 203 was substituted and replaced by Ordinance 11/1963.

(e) Section 315 was repealed and replaced by Ordinance 7/2003.

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

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

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

(6) In this section, “Crown” means Her Majesty in right of Administration of the Areas and the Government of the United Kingdom.

PART 4

Counter-terrorism powers

Arrest without warrant

22. A police officer may arrest without warrant a person whom the officer reasonably suspects to be a terrorist.

Search of premises

23.—(1) A judge may, on the application of a police officer, issue a warrant in relation to specified premises if the judge is satisfied that there are reasonable grounds for suspecting that a person whom the officer reasonably suspects to be a person who falls within section 5(1)(c) (person concerned in the commission, preparation or instigation of acts of terrorism) is to be found there.

(2) A warrant under this section authorises any police officer to enter and search the specified premises for the purpose of arresting the person referred to in subsection (1) under section 22 (arrest without warrant).

(3) Sections 38, 39, 43 and 44 of the Criminal Procedure Ordinance 2016^(a) have effect in relation to a search warrant issued under this section

Search of persons

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

(2) A police officer may search a person arrested under section 22 (arrest without warrant) to discover whether the person has in his or her possession anything which may constitute evidence that he or she is a terrorist.

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

(4) Subsection (5) applies if a police officer, in exercising the power under subsection (1) to stop a person whom the officer reasonably suspects to be a terrorist, stops a vehicle.

(5) The police officer—

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

(b) may seize and retain anything which the police officer—

(i) discovers in the course of such a search; and

(a) Ordinance 9/2016.

(ii) reasonably suspects may constitute evidence that the person is a terrorist.

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

Search of vehicles

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

(2) The police officer may stop and search—

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

to discover whether there is anything which may constitute evidence that the vehicle is being used for the purposes of terrorism.

(3) A police officer may seize and retain anything which the officer—

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

Searches in specified areas or places

26.—(1) The Chief Constable may give an authorisation under subsection (2) or (3) in relation to a specified area or place if the Chief Constable—

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

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

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

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

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

(4) A police officer in uniform may exercise the power conferred by an authorisation under subsection (2) or (3) only for the purpose of discovering whether there is anything which may constitute evidence that the vehicle concerned is being used for the purposes of terrorism or (as the case may be) that the person concerned is a person falling within section 5(1)(c) (person concerned in the commission, preparation or instigation of acts of terrorism).

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

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

- (a) discovers in the course of a search under such an authorisation; and
- (b) reasonably suspects may constitute evidence that the vehicle concerned is being used for the purposes of terrorism or (as the case may be) that the person concerned is a person falling within section 5(1)(c) (person concerned in the commission, preparation or instigation of acts of terrorism).

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

(8) In this section, "specified" means specified in an authorisation.

Code of practice relating to sections 24, 25 and 26

27.—(1) The Administrator must prepare a code of practice containing guidance about—

- (a) the exercise of the powers conferred by sections 24 (search of persons) and 25 (search of vehicles);
- (b) the exercise of the powers to give an authorisation under section 26(2) or (3) (searches of vehicles, persons in vehicles and pedestrians);
- (c) the exercise of the powers conferred by such an authorisation and section 26(6) (seizure of items); and
- (d) such other matters in connection with the exercise of any of the powers mentioned in paragraphs (a) to (c) as the Administrator considers appropriate.

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

(3) In the course of preparing such a code, the Administrator must consult the Presiding Judge.

Issue of code

28.—(1) The code must be brought into force by the Administrator in accordance with an order made as a public instrument.

(2) The code must be published in the Gazette.

(3) An order under subsection (1) may contain any transitional provisions and savings that appear to the Administrator to be necessary or expedient in relation to the bringing into force of the code brought into force by that order.

Alteration or replacement of code

29.—(1) The Administrator—

- (a) must keep the code under review; and
- (b) may prepare an alteration to the code or a replacement code.

(2) Before preparing an alteration or a replacement code, the Administrator must consult the Presiding Judge.

(3) Section 28 applies to an alteration or a replacement code prepared under this section as it applies to a code prepared under section 27.

Effect of code

30.—(1) A police officer must have regard to the code when exercising any powers to which the code relates.

(2) A failure on the part of a police officer to act in accordance with any provision of the code does not of itself make that person liable to criminal or civil proceedings.

(3) The code is admissible in evidence in any such proceedings.

(4) A court may, in particular, take into account a failure by a police officer to have regard to the code in determining a question in any such proceedings.

Application of Criminal Procedure Ordinance 2016

31.—(1) The following sections of the Criminal Procedure Ordinance 2016 have effect in the exercise of powers to search persons and vehicles, and seize items without warrant under this Part—

- (a) section 33(2) to (4) (search to be carried out by person of same sex as person detained);
- (b) section 36 (seizure of items found during search without warrant); and
- (c) sections 43 to 46 (searches: general).

Police powers

32.—(1) A power conferred on a police officer in this Part—

- (a) is in addition to powers which the officer has under any other enactment or rule of law; and
- (b) does not affect those powers.

(2) An officer may, if necessary, use reasonable force in the exercise of a power under this Part.

PART 5

Final

Repeal and revocation

33.—(1) The Counter-Terrorism Ordinance 2015(**a**) is repealed.

(2) The Counter-Terrorism Ordinance 2015 (Code of Practice) Order 2015(**b**) is revoked.

(a) Ordinance 13/2015.

(b) Public instrument 23/2015.

SCHEDULE

Section 26

Searches in specified places or areas

Extent of search powers: supplementary

1. A police officer exercising the power conferred by an authorisation under section 26 may not require a person to remove any clothing in public except for headgear, footwear, an outer coat, a jacket or gloves.

2.—(1) Sub-paragraph (2) applies if a police officer proposes to search a person or vehicle by virtue of section 26(2) or (3).

(2) The police officer may detain the person or vehicle for such time as is reasonably required to permit the search to be carried out at or near the place where the person or vehicle is stopped.

Requirements as to writing

3. If the Chief Constable gives an authorisation under section 26 orally, the Chief Constable must confirm it in writing as soon as reasonably practicable.

4.—(1) Where—

- (a) a vehicle or pedestrian is stopped by virtue of section 26(2) or (3), and
- (b) the driver of the vehicle or the pedestrian applies for a written statement that the vehicle was stopped, or that the pedestrian was stopped, by virtue of section 26(2) or (as the case may be) (3),

the written statement must be provided by the Chief Constable.

(2) An application under sub-paragraph (1) must be made within the period of 12 months beginning with the date on which the vehicle or pedestrian was stopped.

Duration of authorisations

5.—(1) An authorisation under section 26 has effect during the period—

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

(2) This paragraph is subject as follows.

6. The specified date or time must not occur after the end of the period of 14 days beginning with the day on which the authorisation is given.

7.—(1) The Chief Constable must inform the Administrator of an authorisation as soon as reasonably practicable.

(2) An authorisation ceases to have effect at the end of the period of 48 hours beginning with the time when it is given unless it is confirmed by the Administrator before the end of that period.

(3) An authorisation ceasing to have effect by virtue of sub-paragraph (2) does not affect the lawfulness of anything done in reliance on it before the end of the period concerned.

(4) When confirming an authorisation, the Administrator may—

- (a) substitute an earlier date or time for the specified date or time;
- (b) substitute a more restricted area or place for the specified area or place.

8. The Administrator may cancel an authorisation with effect from a time identified by the Administrator.

9.—(1) The Chief Constable may—

- (a) cancel an authorisation with effect from a time identified by the Chief Constable;
- (b) substitute an earlier date or time for the specified date or time;
- (c) substitute a more restricted area or place for the specified area or place.

(2) Any such cancellation or substitution in relation to an authorisation confirmed by the Administrator under paragraph 7 does not require confirmation by the Administrator.

10. The existence, expiry or cancellation of an authorisation does not prevent the giving of a new authorisation.

Specified areas or places

11. Where an authorisation specifies more than one area or place—

- (a) the power of the Chief Constable under paragraph 5(1)(b) to specify a date or time includes a power to specify different dates or times for different areas or places (and the other references in this Schedule to the specified date or time are to be read accordingly); and
- (b) the power of the Administrator under paragraph 7(4)(b), and of the Chief Constable under paragraph 9(1)(c), includes a power to remove areas or places from the authorisation.

Interpretation

12. In this Schedule, "specified" means specified in an authorisation.

EXPLANATORY NOTE

(This note is not part of the Ordinance)

1. This explanatory note relates to the Counter-Terrorism Ordinance 2016 (the “Ordinance”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.
2. This note should be read in conjunction with the Ordinance. It is not, and is not meant to be, a comprehensive description of the Ordinance. So, when a section or part of a section does not seem to require any explanation or comment, none is given.

Summary

3. The Ordinance creates a number of offences related to terrorism and a power of arrest without warrant of a person reasonably suspected of being a terrorist. It provides for police powers to stop and search persons and vehicles in order to prevent an act of terrorism.

Definition of terrorism and terrorist

4. Terrorism is defined in section 3. It is action with a political, religious, racial or ideological motivation designed to influence a government or intimidate members of the public or a section of the public. It covers actions which might not be violent in themselves but which can have a devastating impact. These could include interfering with the supply of water or power where life, health or safety may be put at risk. Subsection (2)(e) covers the disrupting of electronic systems. Subsection (3) provides that where action involves firearms or explosives, it does not have to be designed to influence the government or to intimidate the public or a section of the public to be terrorism.
5. A terrorist is defined in section 5 as a person who has committed an offence under Part 3, a corresponding offence under the UK’s Terrorism Act 2000 or who is or has been concerned in the commission, preparation or instigation of acts of terrorism.

Proscribed organisation

6. A proscribed organisation is defined in section 4 as an organisation which has been proscribed under the UK’s Terrorism Act 2000 because it is concerned in terrorism, including committing or participating in acts of terrorism, preparing for terrorism or promoting or encouraging terrorism.

Offences connected to terrorism.

7. Part 3 creates various offences related to terrorism as follows—
 - a. sections 8 and 9, membership and support of a proscribed organisation;
 - b. section 10, fund-raising for the purposes of terrorism;
 - c. section 11, use and possession of property for the purposes of terrorism,;
 - d. section 12, entering into funding arrangements for the purposes of terrorism;
 - e. section 13, money laundering terrorist property;
 - f. section 15, receiving or providing instruction in the use of firearms, radioactive materials, explosive substances or, chemical, nuclear or biological weapons;
 - g. section 17, directing a terrorist organisation;
 - h. section 18, possession of an article for terrorist purposes;
 - i. section 19, collection or possession of information likely to be useful for the purposes of terrorism;

- j. section 20, eliciting, publishing etc. information about members of the armed forces etc. likely to be useful for the purposes of terrorism;
- k. section 21, inciting terrorism outside the Areas.

Arrest power and related search powers

- 8. Section 22 provides a special arrest power for use in terrorist cases. This is necessary because there may not be enough information to charge an individual with a particular offence even though there is reasonable suspicion of involvement with terrorism. Sections 23 to 25 give the police powers to search premises, persons and vehicles. A warrant is required for a search of premises.

Stop and search powers under an authorisation

- 9. Section 26 allows the Chief Constable to give an authorisation to allow the stop and search of vehicles. Under an authorisation a police officer may search for anything that may constitute evidence that a person is or has been concerned in the commission, preparation or instigation of acts of terrorism, or the vehicle is being used for the purposes of terrorism.
- 10. A police officer in uniform may exercise the powers, once authorised, regardless of whether he or she has a reasonable suspicion that he or she will find such evidence in the course of a search.
- 11. An authorisation can only be given if the Chief Constable reasonably suspects that an act of terrorism will take place and reasonably considers that the authorisation of the powers is necessary to prevent such an act, and that the area or place specified in the authorisation is no greater than is necessary and the duration of the authorisation is no longer than is necessary.
- 12. The Schedule makes further provision about authorisations and searches in specified areas or places under section 26.

Code of practice

- 13. Sections 27 to 30 make provision for a code of practice for the terrorism stop and search powers under sections 24, 25 and 26.
- 14. Section 27 places a duty on the Administrator to prepare a code of practice about the powers. The Administrator must consult the Presiding Judge.
- 15. Section 28 makes provision for the code to be published and brought into force by an order made as a public instrument.
- 16. Section 29 requires that the code is kept under review.
- 17. Section 30(1) requires a police officer to have regard to the code when exercising the powers to which it relates and explains the effect of the code. Section 30(2) provides that a failure to adhere to any aspects of the code of practice would not, of itself, render a person liable to civil or criminal proceedings. However, the code is admissible in criminal or civil proceedings (section 30(3)) and a court may take into account any failure by a police officer to comply with the duty to have regard to the code (section 30(4)).

Police powers

- 18. Section 31 applies specified provisions of the Criminal Procedure Ordinance 2016 to the exercise of police powers to search persons and vehicles and seize items without warrant. Section 32 provides that a police officer may, if necessary, use reasonable force in the exercise of powers under Part 4.

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