

THE ANTI-TERRORISM ACT, 2002.

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**THE ANTI-TERRORISM ACT, 2002.**

**An Act to suppress acts of terrorism, to provide for the punishment of persons who plan, instigate, support, finance or execute acts of terrorism; to prescribe terrorist organisations and to provide for the punishment of persons who are members of, or who profess in public to be members of, or who convene or attend meetings of, or who support or finance or facilitate the activities of terrorist organisations; to provide for investigation of acts of terrorism and obtaining information in respect of such acts including the authorising of the interception of the correspondence of and the surveillance of persons suspected to be planning or to be involved in acts of terrorism; and to provide for other connected matters.**

DATE OF ASSENT: 21st May, 2002.

*Date of commencement:* 7th June, 2002.

BE IT ENACTED by Parliament as follows:

## PART I—PRELIMINARY.

### 1. Short title

This Act may be cited as the Anti-Terrorism Act, 2002.

### 2. Interpretation

In this Act, unless the context otherwise requires—

“aircraft” includes a hovercraft;

“alarm” for the purposes of the definition of “terrorism” means bodily hurt, or apprehension of bodily hurt, disease or disorder, whether permanent or temporary;

“authorised officer” means a security officer designated by the Minister under section 18;

“currency point” has the meaning assigned to it in the First Schedule;

“explosive or other lethal device” means—

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

“infrastructure facility” means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel or communications;

“Minister” means the Minister responsible for internal affairs;

“place of public use” means those parts of any building, land, street, waterway or other location that are accessible or open to members of the public, whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public;

“premises” includes any place and in particular includes—

(a) any vehicle, vessel or aircraft;

(b) any tent or moveable structure;

“property” includes property wherever situated and whether moveable or immovable and things in action;

“security officer” means a member of the Uganda Peoples’ Defence Forces, the Uganda Police Force or of a Security Organisation under the Security Organisations Statute 1987;

“ship” includes every description of vessel used in navigation;

“State or government facility” includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of the State or any other public authority or entity or by employees or officials of an intergovernmental organisation in connection with their official duties;

“terrorism” has the meaning assigned to it in section 7;

“terrorist organisation” means an organisation specified in the Second Schedule;

“vessel” includes every description of vessel or ship used in navigation;

## PART II—GENERAL.

### **3. Consent of DPP required for Prosecution**

No person shall be prosecuted for an offence under this Act except with the consent of the Director of Public Prosecutions.

### **4. Extraterritorial jurisdiction of Uganda courts in relation to offences under this Act**

(1) The courts of Uganda shall have jurisdiction to try any offence prescribed by this Act, wherever committed, if the offence is committed—

(a) in Uganda; or

(b) outside Uganda—

(i) on board a vessel flying the Uganda flag or an aircraft which is registered under the laws of Uganda at the time the offence is committed;

- (ii) on board an aircraft, which is operated by the Government of Uganda, or by a body in which the government of Uganda holds a controlling interest, or which is owned by a company incorporated in Uganda; or
- (iii) by a citizen of Uganda or by a person ordinarily resident in Uganda;
- (iv) against a citizen of Uganda;
- (v) against a State or government facility of Uganda including an embassy or other diplomatic or consular premises of Uganda;
- (vi) by a stateless person who has his or her habitual residence in Uganda;
- (vii) in an attempt to compel Uganda or the Government of Uganda to do or abstain from doing any act;
- (viii) by any person who has for the time being present in Uganda;
- (ix) on the property of any person.

(2) Offences committed outside Uganda to which this section applies, shall be dealt with as if committed in Uganda.

#### **5. Terrorism extraditable**

(1) Notwithstanding any law to the contrary, none of the offences prescribed by this Act shall be regarded for the purposes of extradition or mutual legal assistance, as a political offence or as an offence inspired by political motives.

(2) A request for extradition or for mutual legal assistance where an arrangement for extradition or mutual assistance exists between Uganda and another country, based on an offence referred to in subsection (1), may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

#### **6. Certain offences under this Act triable and bailable only by High Court**

The offence of terrorism and any other offence punishable by more than ten years imprisonment under this Act are triable only by the High Court and bail in respect of those offences may be granted only by the High Court.

### **PART III—TERRORISM AND RELATED OFFENCES.**

#### **7. The offence of terrorism**

(1) Subject to this Act, any person who engages in or carries out any act of terrorism commits an offence and shall, on conviction—

(a) be sentenced to death if the offence directly results in the death of any person;

(b) in any other case, be liable to suffer death.

(2) A person commits an act of terrorism who, for purposes of influencing the Government or intimidating the public or a section of the public and for a political, religious, social or economic aim, indiscriminately without due regard to the safety of others or property, carries out all or any of the following acts—

(a) intentional and unlawful manufacture, delivery, placement, discharge or detonation of an explosive or other lethal device, whether attempted or actual, in, into or against a place of public use, a State or Government facility, a public transportation system or an infrastructure facility, with the intent to cause death or serious bodily injury, or extensive destruction likely to or actually resulting in major economic loss;

(b) direct involvement or complicity in the murder, kidnapping, maiming or attack, whether actual, attempted or threatened, on a person or groups of persons, in public or private institutions;

(c) direct involvement or complicity in the murder, kidnapping, abducting, maiming or attack, whether actual, attempted or threatened on the person, official premises, private accommodation, or means of transport or diplomatic agents or other internationally protected persons;

(d) intentional and unlawful provision or collection of funds, whether attempted or actual, with the intention or knowledge that any part of the funds may be used to carry out any of the terrorist activities under this Act;

(e) direct involvement or complicity in the seizure or detention of, and threat to kill, injure or continue to detain a hostage, whether actual or attempted in order to compel a State, an international inter-governmental organisation, a person or group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage;

(f) unlawful seizure of an aircraft or public transport or the hijacking of passengers or group of persons for ransom;

(g) serious interference with or disruption of an electronic system;

(h) unlawful importation, sale, making, manufacture or distribution of any firearms, explosive, ammunition or bomb;

- (i) intentional development or production or use of, or complicity in the development or production or use of a biological weapon;
- (j) unlawful possession of explosives, ammunition, bomb or any materials for making of any of the foregoing.

### **8. Aiding and abetting terrorism *etc***

Any person who aids or abets or finances or harbours, or renders support to any person, knowing or having reason to believe that the support will be applied or used for or in connection with the preparation or commission or instigation of acts of terrorism, commits an offence and shall, on conviction, be liable to suffer death.

### **9. Establishment of terrorist institutions**

(1) Any person who establishes, runs or supports any institution for—

- (a) promoting terrorism;
- (b) publishing and disseminating news or materials that promote terrorism; or
- (c) training or mobilising any group of persons or recruiting persons for carrying out terrorism or mobilising funds for the purpose of terrorism;

commits an offence and shall be liable on conviction, to suffer death.

(2) Any person who, without establishing or running an institution for the purpose, trains any person for carrying out terrorism, publishes or disseminates materials that promote terrorism, commits an offence and shall be liable on conviction, to suffer death.

## **PART IV—TERRORIST ORGANISATIONS.**

### **10. Terrorist organisations**

(1) The organisations specified in the Second Schedule are declared to be terrorist organisations and any organisation which passes under a name mentioned in that Schedule shall be treated as a terrorist organisation whatever relationship (if any) it has, to any other organisation bearing the same name.

(2) The Minister may, by statutory instrument, made with the approval of the Cabinet, amend the Second Schedule.

(3) An instrument made under subsection (2) shall be laid before Parliament within fourteen days after being published in the Gazette and may be annulled by Parliament by resolution within twenty-one days after being laid; but any annulment under this subsection shall not affect the previous operation of the instrument.

(4) Any period specified in subsection (3) shall only run when Parliament is sitting.

(5) The Minister may, by statutory instrument—

- (a) declare any terrorist organisation dissolved;
- (b) provide for the winding up of the terrorist organisation; and
- (c) provide for the forfeiture to the State of the property and assets of the terrorist organisation.

(6) In this section “organisation” includes any association or combination of persons.

#### **11. Membership, support and meetings *etc***

(1) A person who—

- (a) belongs or professes to belong to a terrorist organisation;
- (b) solicits or invites support for a terrorist organisation, other than support with money or other property; or
- (c) willfully arranges or assist in the arrangement of a meeting to be addressed by a person belonging or professing to belong to a terrorist organisation or addresses any meeting (whether or not it is a meeting to which the public are admitted) knowing that the meeting is—
  - (i) to support a terrorist organisation;
  - (ii) to further the activities of a terrorist organisation;

commits an offence.

(2) For the avoidance of doubt, paragraph (c) of subsection (1) shall not apply to a person who arranges or assists in the arrangement or management of a meeting to be addressed by, or who addresses any meeting with a person or persons belonging or professing to belong to a terrorist organisation for purposes of negotiating peace.

(3) A person who commits an offence under subsection (1) is liable, on conviction, to imprisonment not exceeding ten years or a fine not exceeding five hundred currency points, or both.

### **PART V—FINANCIAL ASSISTANCE FOR TERRORISM.**

#### **12. Contributions towards acts of terrorism**



(1) A person who—

- (a) solicits or invites any other person to give, lend or otherwise make available, whether for consideration or not, any money or other property; or
- (b) receives or accepts from any other person, whether for consideration or not, any money or other property,

intending that it shall be applied or used for the commission of, or in furtherance of or in connection with acts of terrorism, or having reasonable cause to suspect that it may be so used or applied, commits an offence.

(2) A person who—

- (a) gives, lends or otherwise makes available to any other person, whether for consideration or not, any money or other property; or
- (b) enters into or is otherwise concerned in an arrangement by which money or other property is or is to be made available to another person,

knowing or having reasonable cause to suspect that it will or may be applied or used as mentioned in subsection (1), commits an offence.

### **13. Contributions to resources of terrorism organisations**

Any person who wilfully and knowingly—

- (a) solicits or invites any other person to give, lend or otherwise make available, whether for consideration or not, any money or other property for the benefit of a terrorist organisation;
- (b) gives, lends or otherwise makes available or receives or accepts, whether for consideration or not, any money or other property for the benefit of a terrorist organisation; or
- (c) enters into or is otherwise concerned in an arrangement by which money or other property is or is to be made available for the benefit of a terrorist organisation,

commits an offence.

### **14. Assisting in retention or control of terrorism funds**

(1) A person who enters into or is otherwise concerned in an arrangement by which the retention or control by or on behalf of another person of terrorist funds is facilitated, whether by concealment, removal from Uganda, transfer to nominees or otherwise, commits an offence.

(2) In proceedings against a person for an offence under this section, it is a defence to prove that that person did not know and had no reasonable cause to suspect that the arrangement related to terrorist funds.

(3) In this section and in section 15, “terrorist funds” means—

(a) funds which may be applied or used for the commission of, or in furtherance of, or in connection with acts of terrorism;

(b) the proceeds of the commission of acts of terrorism or of activities engaged in furtherance of or in connection with such acts; and

(c) the resources of a terrorist organisation.

(4) Paragraph (b) of subsection (3) includes any property which, in whole or in part, directly or indirectly represents such proceeds as are mentioned in that paragraph; and paragraph (c) of that subsection includes any money or other property which is, or is to be applied or made available for the benefit of a terrorist organisation.

## **15. Disclosure of information about terrorist funds**

(1) A person may, notwithstanding any restriction on the disclosure of information imposed by contract or law, disclose to the Director of Public Prosecutions or a police officer or other public officer authorised in writing by the Director of Public Prosecutions, a suspicion or belief that any money or other property is or is derived from terrorist funds or any matter on which such a suspicion or belief is based.

(2) A person who enters into or is otherwise concerned in any such transaction or arrangement as is mentioned in section 12, 13 and 14 does not commit an offence under that section if he or she is acting with the express consent of a police officer or other public officer authorised in writing by the Director of Public Prosecution or if—

(a) he or she discloses to the Director of Public Prosecutions or a police officer or other public officer authorised in writing by the Director of Public Prosecutions, his or her suspicion or belief that the money or other property concerned is or is derived from terrorist funds or any matter on which the suspicion or belief is based; and

(b) the disclosure is made after he or she enters into or otherwise becomes concerned in the transaction or arrangement in question but is made on his or her own initiative and as soon as it is reasonable for him or her to make it,

but paragraphs (a) and (b) of this subsection do not apply in a case where, having disclosed any such suspicion, belief or matter to the Director of Public Prosecutions or a police officer or other public officer authorised in writing by the Director of Public Prosecutions and having been forbidden by any such person to enter into or otherwise be concerned in the transaction or arrangement in question, he or she nevertheless does so.

(3) In proceedings against a person for an offence under section 12 (1)(b) or 12(2), 13 (b) or (c) or 14, it is a defence to prove—

- (a) that the accused person intended to disclose to the Director of Public Prosecutions or a police officer or other public officer authorised in writing by the Director of Public Prosecutions, such a suspicion, belief or matter as is mentioned in subsection (2)(a); and
- (b) that there is a reasonable excuse for his or her failure to make the disclosure as mentioned in subsection (2)(b).

## **16. Penalties and forfeiture**

(1) A person who commits an offence under section 12,13 or 14, is liable, on conviction, to imprisonment not exceeding ten years or a fine not exceeding five hundred currency points, or both.

(2) Subject to this section, the court by or before which a person is convicted of an offence under section 12 (1) or 12 (2)(a) may order the forfeiture of any money or other property—

- (a) which, at the time of the offence, the accused person had in his or her possession or under his or her control; and
- (b) which, at that time—
  - (i) in the case of an offence under subsection (1) of section 12, he or she intended should be applied or used, or had reasonable cause to suspect might be applied or used, as mentioned in that subsection;
  - (ii) in the case of an offence under subsection (1)(a) of section 12 he or she knew or had reasonable cause to suspect would or might be applied or used as mentioned in subsection (1) of that section.

(3) Subject to this section, the court by or before which a person is convicted of an offence under section 12(2)(b), 13 (c) or 14 may order the forfeiture of the money or other property to which the arrangement in question related and which, in the case of an offence under section 12 (2)(b), he or she knew or had reasonable cause to suspect would or might be applied or used as mentioned in section 12 (1).

(4) Subject to the provisions of this section, the court by or before which a person is convicted of an offence under section 13(a) or (b) may order the forfeiture of any money or other property which, at the time of the offence, he or she had in his or her possession or under his or her control for the use or benefit of a terrorist organisation.

(5) The court shall not under this section, make an order forfeiting any money or other property unless the court is satisfied that the money or property may, unless forfeited, be applied or used as mentioned in section 12 (1) of this Act.

(6) 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 section, the court shall, before making an order in respect of it, give that person an opportunity to be heard.

## PART VI—TERRORIST INVESTIGATIONS.

### **17. Terrorist investigations**

(1) The Third Schedule has effect for conferring powers to obtain information for the purposes of terrorist investigations namely, investigations into the commission, preparation or instigation of—

- (a) acts of terrorism; or
- (b) any other act which constitutes an offence under this Act.

(2) Where, in relation to a terrorist investigation, a warrant or order under the Third Schedule has been issued or made, or has been applied for and not refused, a person who, knowing or having reasonable cause to suspect that the investigation is taking place—

- (a) makes any disclosure which is likely to prejudice the investigation; or
- (b) destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, material which is or is likely to be relevant to the investigation,

commits an offence.

(3) In proceedings against a person for an offence under subsection (2) (b), it is a defence to prove that the accused person had no intention of concealing any information contained in the material in question from the person carrying out the investigation.

(4) A person who commits an offence under subsection (2) is liable, on conviction, to imprisonment not exceeding five years or a fine not exceeding two hundred and fifty currency points, or both.

## PART VII—INTERCEPTION OF COMMUNICATIONS AND SURVEILLANCE.

### **18. Minister to designate persons to be authorised officers**

(1) The Minister may, by writing, designate a security officer as an authorised officer under this Part.

(2) An order issued by the Minister in respect of an authorised officer shall be in force for ninety days from the date specified in the order, and shall then expire.

### **19. Powers of authorised officer**

(1) Subject to this Act, an authorised officer shall have the right to intercept the communications or a person and otherwise conduct surveillance of a person under this Act.

(2) The powers of an authorised officer shall be exercised in respect of a person or a group or category of persons suspected of committing any offence under this Act.

(3) The functions of an authorised officer shall be exercised only in respect of the person or group or category of persons described in the order.

(4) The purposes for which interception or surveillance may be conducted under this Part are—

- (a) safeguarding the public interest;
- (b) prevention of the violation of the fundamental and other human rights and freedoms of any person from terrorism;
- (c) preventing or detecting the commission of any offence under this Act; or
- (d) safeguarding the national economy from terrorism.

(5) The scope of the interception and surveillance allowed under this Part is limited to—

- (a) the interception of letters and postal packages of any person;
- (b) interception of the telephone calls, faxes, emails and other communications made or issued by or received by or addressed to a person;
- (c) monitoring meetings of any group of persons;

- (d) surveillance of the movements and activities of any person;
- (e) electronic surveillance of any person;
- (f) access to bank accounts of any person; and
- (g) searching of the premises of any person.

(6) For the avoidance of doubt, power given to an authorised officer under subsection (5) includes—

- (a) the right to detain and make copies of any matter intercepted by the authorised officer;
- (b) the right to take photographs of the person being surveilled and any other person in the company of that person, whether at a meeting or otherwise; and
- (c) the power to do any other thing reasonably necessary for the purposes of this subsection.

#### **20. Obstructing authorised officer**

Any person who knowingly obstructs an authorised officer in the carrying out of his or her functions under this Part commits an offence and is liable, on conviction, to imprisonment not exceeding two years or a fine not exceeding one hundred currency points, or both.

#### **21. Offences by authorised officer**

Any authorised officer who—

- (a) demands or accepts any money or other benefit in consideration of his or her refraining from carrying out his or her functions under this Part; or
- (b) demands any money or other benefit from any person under threat to carry out any of his or her functions under this Part;
- (c) fails without reasonable excuse or neglects to carry out the requirements of the order;
- (d) recklessly releases information which may prejudice the investigation;
- (e) engages in torture, inhuman and degrading treatment, illegal detention or intentionally causes harm or loss to property,

commits an offence and is liable, on conviction, to imprisonment not exceeding five years or a fine not exceeding two hundred and fifty currency points, or both.

**22. Things obtained from interception, surveillance admissible in evidence**

Any recording, document, photograph or other matter obtained in the exercise of the functions of an authorised officer under this Part is admissible in evidence in any proceedings for an offence under this Act.

PART VIII—ATTEMPTS, CONSPIRACIES AND ACCESSORIES, ETC.

**23. Attempts defined**

(1) When a person intending to commit an offence under this Act, begins to put his or her intention into execution by means adapted to its fulfillment, and manifests his or her intention by some overt act, but does not fulfil his or her intention to such an extent as to commit the offence, he or she is deemed to attempt to commit the offence.

(2) It is immaterial—

- (a) except so far as regards punishment, whether the offender does all that is necessary on his or her part for completing the commission of the offence, or whether the complete fulfillment of his or her intention is prevented by circumstances independent of his or her will, or whether he or she desists of his or own motion from the further prosecution of his or her intention;
- (b) that by reason of circumstances not known to the offender, it is impossible in fact to commit the offence.

**24. Punishment for attempts to commit offences under this Act**

Any person who attempts to commit an offence under this Act commits an offence and is, unless otherwise provided in this Act—

- (a) where the offence is punishable by death or imprisonment for fourteen years or upwards with or without any other punishment, liable, on conviction, to imprisonment not exceeding seven years or a fine not exceeding three hundred and fifty currency points or both; or
- (b) where paragraph (a) does not apply, liable, on conviction, to imprisonment not exceeding two years or a fine not exceeding one hundred currency points, or both.

**25. Conspiracy to commit an offence**

Any person who conspires with another to commit an offence under this Act, or to do any act in any part of the world which if done in Uganda would be an offence under this Act and which is an offence under the laws in force in the place where it

is proposed to be done, commits an offence and is liable, if no other punishment is provided, to imprisonment not exceeding seven years, or, if the greatest punishment to which a person convicted of the offence in question is liable is less than imprisonment for seven years, then to such lesser punishment.

**26. Accessory before the fact**

A person who directly or indirectly counsels, procures or commands any person to commit any offence under this Act which is committed in consequence of such counselling, procuring or commandment is an accessory before the fact to the offence.

**27. Punishment for accessory before the fact**

(1) An accessory before the fact in relation to an offence under this Act commits an offence and, unless otherwise provided by this Act, is liable, on conviction, to the same penalty as the main offence itself.

(2) Without prejudice to the general effect of subsection (1), an accessory before the fact includes a person who identifies targets in which or on which any act of terrorism or any other act which constitutes an offence under this Act is to be committed.

**28. Definition of accessory after the fact**

(1) A person who receives or assists another who, to his or her knowledge, has committed an offence, in order to enable him or her to escape punishment, is said to become an accessory after the fact to the offence.

(2) A spouse does not become an accessory after the fact to an offence which his or her spouse has committed by receiving or assisting the spouse in order to enable the spouse to escape punishment; or by receiving or assisting, in the spouse's presence and by his or her authority, another person who commits an offence in the commission of which the other spouse has taken part, in order to enable that other person to escape punishment; nor does a spouse become an accessory after the fact to an offence which his or her spouse commits by receiving or assisting that spouse in order to enable that spouse to escape punishment.

**29. Punishment of accessory after the fact of offences under this Act**

Any person who becomes an accessory after the fact to an offence under this Act commits an offence and is liable, if no other punishment is provided, to imprisonment not exceeding three years or a fine not exceeding one hundred and fifty currency points, or both.

PART IX—MISCELLANEOUS.

**30. Power to use reasonable force**



A police officer or other public officer or person may use reasonable force for the purpose of exercising any functions conferred or imposed on him or her under or by virtue of this Act.

### **31. Power of Minister to amend First Schedule**

The Minister may, by statutory instrument, with the approval of the Cabinet, amend the First Schedule.

### **32. Protection for persons acting under this Act**

No police officer or other public officer or person assisting such an officer is liable to any civil proceedings for any thing done by him or her, acting in good faith, in the exercise of any function conferred on that officer under this Act.

### **33. Consequential amendment of Penal Code**

The Penal Code is amended—

(a) by repealing of section 28; and

(b) in subsection (2) of section 5, by deleting of the reference to section 28.

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## **SCHEDULES.**

### **FIRST SCHEDULE**

SECTION 2

#### **CURRENCY POINT**

A currency point is equivalent to twenty thousand shillings.

### **SECOND SCHEDULE**

SECTION 10(1)

#### **TERRORIST ORGANISATIONS**

1. The Lords' Resistance Army.
2. The Lords' Resistance Movement.
3. Allied Democratic Forces.
4. Al-queda.

### **THIRD SCHEDULE**

SECTION 17

#### **INFORMATION AND INVESTIGATION RELATING TO TERRORISM ETC.**

### **1. Interpretation**

In this Schedule—

“investigation officer” means a police officer not below the rank of Superintendent of Police or a public officer authorised in writing by the Director of Public Prosecutions;

“terrorist investigation” means any investigation to which section 17 of the Act applies;

“magistrate” means a Magistrate Grade I.

## **2. Meaning of “items subject to legal privilege”**

(1) Subject to subparagraph (2), in this Schedule, “items subject to legal privilege” means—

(a) communications between a professional legal adviser and his or her client or any person representing his or her client made in connection with the giving of legal advice to the client;

(b) communications between a professional legal adviser and his or her client or any person representing his or her client or between such an adviser or his or her client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and

(c) items enclosed with or referred to in such communications and made—

(i) in connection with the giving of legal advice; or

(ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

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

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

## **3. Meaning of “excluded material”**

(1) Subject to the following provisions of this paragraph, in this Schedule “excluded material” means—

(a) personal records which a person has acquired or created in the course of any trade, business, profession or other occupation, or for the purposes of any paid or unpaid office and which he or she holds in confidence;

(b) human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence;

(c) journalistic material which a person holds in confidence and which consists—

(i) of documents; or

(ii) of records other than documents.

(2) A person holds material other than journalistic material in confidence, for the purposes of this paragraph if he or she holds it subject—

- (a) to an express or implied undertaking to hold it in confidence; or
- (b) to a restriction on disclosure or an obligation of secrecy contained in any enactment, including an enactment contained in an Act.

(3) A person holds journalistic material in confidence for the purposes of this paragraph if—

- (a) he or she holds it subject to such an undertaking, restriction or obligation; and
- (b) one or more persons have continuously held it subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism.

#### **4. Meaning of “personal records”**

In this Schedule, “personal records” means documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating—

- (a) to his or her physical or mental health;
- (b) to spiritual counselling or assistance given or to be given to him or her; or
- (c) to counselling or assistance given or to be given to him or her for the purposes of his or her personal welfare, by any voluntary organisation or by any individual who—
  - (i) by reason of his or her office or occupation has responsibilities for his or her personal welfare; or
  - (ii) by reason of an order of a court has responsibilities for his or her supervision.

#### **5. Meaning of “journalistic material”**

(1) Subject to subparagraph (2) of this paragraph “journalistic material” means material acquired or created for the purposes of journalism.

(2) Material is only journalistic material for the purposes of this Schedule if it is in the possession of a person who acquired or created it for the purposes of journalism.

(3) A person who receives material from someone who intends that the recipient shall use it for purposes of journalism is to be taken to have acquired it for those purposes.

#### **6. Meaning of “special procedure material”**

(1) In this Schedule, “special procedure material” means—

(a) material to which subparagraph (2) applies;

(b) journalistic material, other than excluded material.

(2) Subject to the following provisions of this paragraph, this paragraph applies to material, other than items subject to legal privilege and excluded material, in the possession of a person who—

(a) acquired or created it in the course of any trade, business, profession or other occupation or for the purpose of any paid or unpaid office; and

(b) holds it subject—

(i) to an express or implied undertaking to hold it in confidence; or

(ii) to a restriction or obligation such as is mentioned in paragraph 3(2)(b) of this Schedule.

(3) Where material is acquired—

(a) by an employee from his or her employer and in the course of his or her employment; or

(b) by a company from an associated company,

it is only special procedure material if it was special procedure material immediately before the acquisition.

(4) Where material is created by an employee in the course of his or her employment, it is only special procedure material if it would have been special procedure material had his or her employer created it.

(5) Where material is created by a company on behalf of an associated company, it is only special procedure material if it would have been special procedure material had the associated company created it.

(6) A company is to be treated as another's associated company for the purposes of this section if it would be so treated under section 4 of the Income Tax Act, 1997.

## **7. Search for material other than excluded or special procedure material**

(1) A Magistrate may, on an application made by an investigation officer, issue a warrant under this paragraph if satisfied that a terrorist investigation is being carried out and that there are reasonable grounds for believing—

(a) 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 the investigation;

(b) that the material does not consist of or include items subject to legal privilege, excluded material or special procedure material; and

(c) that any of the conditions in subparagraph (2) are fulfilled.

(2) The conditions referred to in subparagraph (1)(c) are—

(a) that it is not practicable to communicate with any person entitled to grant entry to the premises;

(b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the material;

(c) that entry to the premises will not be granted unless a warrant is produced;

(d) that the purpose of a search may be frustrated or seriously prejudiced unless an investigation officer arriving at the premises can secure immediate entry to them.

(3) A warrant under this paragraph shall authorise an investigation officer to enter the premises specified in the warrant and to search the premises and any person found there, and to seize and retain anything found there or on any such person, other than items subject to legal privilege, if he or she has reasonable grounds for believing—

(a) that it is likely to be of substantial value (whether by itself or together with other material) to the investigation; and

(b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

## **8. Order for production of excluded or special procedure material**

(1) An investigation officer may, for the purposes of a terrorist investigation, apply to a Magistrate for an order under subparagraph (2) in relation to particular material or material of a particular description, being material consisting of excluded or special procedure material.

(2) If, on such an application, the Magistrate is satisfied that the material consists of or includes any material mentioned in subparagraph (1), that it does not include items subject to legal privilege and that the conditions in subparagraph (5) are fulfilled, he or she may make an order that the person who appears to him or her to be in possession of the material to which the application relates shall—

(a) produce it to an investigating officer for him or her to take away; or

(b) give an investigating officer access to it,

within such period as the order may specify and if the material is not in that person's possession (and will not come into his or her possession within that period) to state to the best of his or her knowledge and belief where it is.

(3) An order under subparagraph (2) may relate to material of a particular description which is expected to come into existence or become available to the person concerned in the period of twenty-eight days beginning with the date of the order, and an order made in

relation to such material shall require that person to notify a named investigating officer as soon as possible after the material comes into existence or becomes available to that person.

(4) The period to be specified in an order under subparagraph (2) shall be seven days from the date of the order or, in the case of an order made by virtue of subparagraph (3), from the date of notification to the investigation officer, unless it appears to the Magistrate that a longer or shorter period would be appropriate in the particular circumstances of the application.

(5) The conditions referred to in subparagraph (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 purposes of which the application is made; and

(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.

(6) Where the Magistrate makes an order under subparagraph (2)(b) in relation to material on any premises, he or she may, on the application of an investigation officer, order any person who appears to him or her to be entitled to grant entry to the premises, to allow an investigation officer to enter the premises to obtain access to the material.

## **9. Revocation or variation of order**

(1) A Magistrate may, on his or her own motion or an application by any person aggrieved by the order, revoke or discharge an order made under this Schedule.

(2) Before revoking an order under this paragraph, the Magistrate shall hear the investigation officer or the Director of Public Prosecutions on the matter.

(3) A Magistrate may, on the application of an investigation officer or a person aggrieved by the order or the Director of Public Prosecutions, vary an order made under this Schedule.

## **10. Search for excluded or special procedure material**

(1) An investigation officer may apply to a Magistrate for a warrant under this paragraph, in relation to specified premises.

(2) On an application under subparagraph (1), the Magistrate may issue a warrant under this paragraph if satisfied—

- (a) that an order made under paragraph 8 in relation to material on the premises has not been complied with; or
  - (b) that there are reasonable grounds for believing that there is, on the premises, material consisting of or including excluded material or special procedure material, that it does not include items subject to legal privilege and that the conditions in subparagraph (5) of paragraph 8 and the condition in subparagraph (3) of this paragraph are fulfilled in respect of that material.
- (3) The condition referred to in subparagraph (2)(b) is that it would not be appropriate to make an order under paragraph 8 in relation to the material because—
- (a) it is not practicable to communicate with any person entitled to produce the material; or
  - (b) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
  - (c) the investigation for the purposes of which the application is made might be seriously prejudiced unless an investigation officer could secure immediate access to the material.
- (4) A warrant under this paragraph shall authorise an investigation officer to enter the premises specified in the warrant and to search the premises and any person found there, and to seize and retain anything found there or on any such person, other than items subject to legal privilege, if he or she has reasonable grounds for believing that it is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application was made.

#### **11. Explanation of seized or produced material**

(1) A Magistrate may, on an application made by an investigation officer, order any person specified in the order to provide an explanation of any material seized in pursuance of a warrant under paragraph 7 or 10, or produced or made available to an investigation officer under paragraph 8.

(2) A person shall not, under this paragraph, be required to disclose any information which he or she would be entitled to refuse to disclose on grounds of legal professional privilege in proceedings in any court, except that a lawyer may be required to furnish the name and address of his or her or client.

(3) A statement by a person in response to a requirement imposed by virtue of this paragraph may only be used in evidence against him or her—

- (a) on a prosecution for an offence under subparagraph (4); or
  - (b) on a prosecution for some other offence, where in giving evidence, he or she makes a statement inconsistent with it.
- (4) A person who, in purported compliance with a requirement under this paragraph—

(a) makes a statement which he or she 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,

commits an offence.

(5) A person who commits an offence under subparagraph (4) is liable, on conviction, to imprisonment not exceeding two years or a fine not exceeding one hundred currency points, or both.

(6) Paragraph 9 of this Schedule shall apply to orders under that paragraph as it applies to orders made under paragraph 8.

## **12. Urgent cases**

(1) If an investigation officer has reasonable grounds for believing that the case is one of great emergency and that in the interest of the State, immediate action is necessary, he or she may, by a written order signed by him or her, give to any police officer the authority which may be given by a search warrant under paragraph 7 or 10.

(2) Where an authority is given under this paragraph, particulars of the case shall be notified as soon as may be to the Director of Public Prosecutions.

(3) An order under this paragraph may not authorise a search for items subject to legal privilege.

(4) If the investigation officer mentioned in subparagraph (1) has reasonable grounds for believing that that case is such as is mentioned in that subparagraph, he or she may, by a notice in writing signed by him or her, require any person specified in the notice to provide an explanation of any material seized in pursuance of an order under this paragraph.

(5) Any person who, without reasonable excuse, fails to comply with a notice under subparagraph (4), commits an offence and is liable, on conviction, to imprisonment not exceeding six months or a fine not exceeding fifty currency points, or both.

(6) Subparagraphs (2) to (5) of paragraph 11 shall apply to a requirement imposed under subparagraph (4) as they apply to a requirement under that paragraph.

## **13. Protection of investigation Officers**

An investigation officer is not liable to any civil action in respect of anything done in good faith by him or her under the authority or an order issued under this Schedule.