

THE TERRORISM PREVENTION ACT, 2005

(Act 18 of 2005)

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SCHEDULES.

JAMAICA

No. 18 2005

I assent,

[L.S.]

(Sgd) HF Cooke
9th May, 2005

AN ACT to Provide measures to combat terrorism and for
connected matters.

[*After date notified by the Minister
bringing the Act into operation*]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and
with the advice and consent of the Senate and House of
Representatives of Jamaica, and by the authority of the same, as
follows:—

1. This Act may be cited as the Terrorism Prevention Act, 2005, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*. Short title and commencement.

2.—(1) In this Act, unless the context otherwise requires— Interpretation.

“applicable property” means any property—

- (a) that has been used, in whole or in part, to facilitate or carry out a terrorism offence; or
- (b) derived, obtained or realized directly or indirectly from the commission of a terrorism offence;

“Court” means the Supreme Court;

“entity” means a person, group, trust, partnership or fund or an unincorporated association or organization;

“financial institution” means—

- (a) a bank licensed under the Banking Act;
- (b) a financial institution licensed under the Financial Institutions Act;
- (c) a building society registered under the Building Societies Act;
- (d) a society registered under the Co-operative Societies Act;
- (e) an insurance company registered under the Insurance Act;
- (f) a person licensed under the Bank of Jamaica Act to operate an exchange bureau;
- (g) a person licensed under the Securities Act as a dealer or investment adviser;
- (h) money transfer and remittance agents and agencies;
- (i) any other person declared by the Minister, by order subject to affirmative resolution, to be a financial institution for the purposes of this Act;

“interest” in relation to property, means—

- (a) a legal or equitable interest in the property; or
- (b) a right, power or privilege in connection with property;

“listed entity” means an entity declared to be a listed entity in accordance with section 14;

“property” includes money and all other property, real or personal, including things in action and other intangible or incorporeal property;

“terrorism offence” means—

- (a) an offence constituted by an act or omission referred to in the definition of “terrorist activity”;
- (b) an offence under section 4, 5, 6, 7, 8, 10, 11 or 12; or
- (c) a conspiracy or attempt to commit, or aiding or abetting, procuring or counselling in relation to, an offence referred to in paragraph (b) ;

“terrorist activity” means an act or omission in or outside Jamaica that, if committed in Jamaica, would be one of the following offences—

- (a) an offence under section 12, 13, 16, 17, 17A or 18 of the Aircraft (Tokyo, Hague and Montreal Conventions) Act;
- (b) an offence referred to in section 3(1);
- (c) an offence under section 3 (2); or
- (d) a conspiracy or attempt to commit, or aiding, abetting, procuring or counselling in relation to, an offence referred to in paragraph (a) , (b) or (c);

“terrorist group” means—

- (a) an entity that has, as one of its purposes or activities, facilitating or carrying out any terrorist activity; or
- (b) a listed entity,

and includes an association of such entities.

(2) This Act shall be interpreted and administered so as to ensure Jamaica's conformity with its international obligations, while protecting the fundamental rights and freedoms guaranteed by the Constitution.

Terrorist Activity and Offences

3.—(1) A person who commits an offence set out in the First Schedule commits an indictable offence and shall be liable to imprisonment for life.

Terrorist
activity.
First
Schedule

(2) Any person who commits an act, or omits to act, in the circumstances referred to in subsection (4) commits an offence if the act or omission intentionally—

(a) causes—

(i) death; or

(ii) serious bodily harm,

to a person;

(b) endangers a person's life, or the health or safety of the public or any segment of the public; or

(c) causes substantial property damage, whether to public or private property, if such damage is likely to result in the conduct or harm referred to in any of paragraphs (a) to (c).

(3) An offence under subsection (2) does not include—

(a) an act or omission that is committed during an armed conflict and, at the time and in the place of its commission, is in accordance with international law applicable to the conflict;

(b) the activities undertaken by military forces of a State in the exercise of their official duties, to the extent that those activities are governed by other rules of international law; or

(c) any advocacy, protest, dissent or stoppage of work, which does not involve an activity that is intended to cause death or serious bodily harm to a person, to endanger a person's life or to cause a serious risk to the health or safety of the public or a segment of the public.

(4) The circumstances mentioned in subsection (2) are that the act or omission is committed in whole or in part for a political, religious or ideological purpose, objective or cause with the intention of—

(a) intimidating the public, or a segment of the public, with regard to its security, including its economic security; or

- (b) compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the person, government or organization, is inside or outside Jamaica.

(5) A person who commits an offence under subsection (2) commits an indictable offence and shall be liable to imprisonment for life.

4.—(1) A person commits an offence if that person directly or indirectly, wilfully and without lawful justification or excuse, collects property, provides or invites a person to provide, or makes available, property or financial or other related services—

Providing, making available etc , property or services for terrorist purposes

- (a) intending that they be used, or knowing that they will be used, in whole or in part—
 - (i) for the purpose of facilitating or carrying out any terrorist activity; or
 - (ii) for the benefit of any entity who that person knows is committing or facilitating any terrorist activity; or
- (b) knowing that, in whole or part, they will be used by or will benefit a terrorist group.

(2) A person who commits an offence under subsection (1) commits an indictable offence and is liable—

- (a) in the case of an individual, to imprisonment for life; or
- (b) in the case of a body corporate, to a fine.

5. Every person who, for the purpose of facilitating or carrying out a terrorist activity—

Using or possessing property for terrorist purposes.

- (a) uses property, directly or indirectly, in whole or in part; or
- (b) possesses property intending that it be so used or knowing that it will be so used directly or indirectly in whole or in part,

commits an indictable offence and is liable to imprisonment for life, in the case of an individual, or to a fine in the case of a body corporate.

Dealing in
property for
terrorist
purposes.

6.—(1) No person in Jamaica and no Jamaican outside Jamaica shall knowingly—

- (a) deal directly or indirectly in or with any property that is owned or controlled by or on behalf of a terrorist group;
- (b) enter into or facilitate, directly or indirectly, any transaction in respect of property referred to in paragraph (a);
- (c) provide any financial or other related services in respect of that property to, for the benefit of or at the direction of, a terrorist group; or
- (d) convert any such property or take any steps to conceal or disguise that the property is owned or controlled by or on behalf of a terrorist group.

(2) A person who contravenes this section commits an indictable offence and shall be liable upon conviction to—

- (a) imprisonment for life, in the case of an individual; or
- (b) a fine, in the case of a body corporate.

Participation
in activity of
terrorist
group.

7.—(1) Every person who knowingly participates in or contributes to, directly or indirectly, any activity of a terrorist group for the purpose of enhancing the ability of any terrorist group to facilitate or carry out a terrorist activity commits an indictable offence and is liable upon conviction to imprisonment for life, in the case of an individual, or to a fine in the case of a body corporate.

(2) An offence may be committed under subsection (1) whether or not—

- (a) a terrorist group actually facilitates or carries out a terrorist activity;
- (b) the participation or contribution of the accused actually enhances the ability of a terrorist group to facilitate or carry out a terrorist activity; or
- (c) the accused knows the specific nature of any terrorist activity that may be facilitated or carried out by a terrorist group.

(3) Participating in or contributing to an activity of a terrorist group includes—

- (a) providing, receiving or recruiting a person to receive training in order to facilitate or commit terrorist activity;
- (b) providing or offering to provide a skill or an expertise for the benefit of, at the direction of or in association with a terrorist group;
- (c) recruiting a person in order to facilitate or commit—
 - (i) a terrorism offence; or
 - (ii) an act or omission outside Jamaica that, if committed in Jamaica, would be a terrorism offence;
- (d) entering or remaining in any country for the benefit of, at the direction of or in association with, a terrorist group; or
- (e) making oneself available, in response to instructions from any of the persons who constitute a terrorist group, to facilitate or commit—
 - (i) a terrorism offence; or
 - (ii) an act or omission outside Jamaica that, if committed in Jamaica, would be a terrorism offence.

(4) In determining whether an accused participates in or contributes to any activity of a terrorist group, the Court may consider, among other factors, whether the accused—

- (a) uses a name, word, symbol or other representation that identifies, or is associated with, the terrorist group;
- (b) frequently associates with any of the persons who constitute the terrorist group;
- (c) receives any benefit from the terrorist group; or
- (d) repeatedly engages in activities at the instruction of any of the persons who constitute the terrorist group.

Facilitating
terrorist
activity.

8.—(1) Every person who knowingly facilitates a terrorist activity commits an indictable offence and is liable upon conviction to—

- (a) imprisonment for life, in the case of an individual; or
- (b) a fine, in the case of a body corporate.

(2) For the purpose of this Act, a terrorist activity is facilitated—

- (a) where the facilitator knows that a terrorist activity will be facilitated;
- (b) whether or not the facilitator knows the specific nature of the terrorist activity; and
- (c) whether or not any terrorist activity was actually carried out.

Commission
of offence
for terrorist
group.

9.—(1) Every person who commits a terrorism offence under this Act for the benefit of, at the direction of or in association with, a terrorist group, commits an indictable offence and is liable upon conviction to—

- (a) imprisonment for life, in the case of an individual; or
- (b) a fine, in the case of a body corporate.

(2) An offence may be committed under subsection (1) whether or not the accused knows the identity of any of the persons who constitute the terrorist group.

Instructing
commission
of offence
for terrorist
group.

10.—(1) Every person who knowingly instructs, directly or indirectly, any person to carry out any activity for the benefit of, at the direction of or in association with, a terrorist group, for the purpose of enhancing the ability of any terrorist group to facilitate or carry out a terrorist activity, commits an indictable offence and is liable upon conviction to—

- (a) imprisonment for life, in the case of an individual; or
- (b) a fine, in the case of a body corporate.

(2) An offence may be committed under subsection (1) whether or not—

- (a) the activity that the accused instructs to be carried out is actually carried out;

- (b) the accused instructs a particular person to carry out the activity referred to in paragraph (a);
- (c) the accused knows the identity of the person instructed to carry out the activity referred to in paragraph (a);
- (d) the person whom the accused instructs to carry out that activity knows that it is to be carried out for the benefit of, at the direction of or in association with, a terrorist group;
- (e) a terrorist group actually facilitates or carries out a terrorist activity;
- (f) the activity referred to in paragraph (a) actually enhances the ability of a terrorist group to facilitate or carry out a terrorist activity; or
- (g) the accused knows the specific nature of any terrorist activity that may be facilitated or carried out by a terrorist group.

11.—(1) Every person who, directly or indirectly, knowingly instructs any person to carry out a terrorist activity commits an indictable offence and is liable upon conviction to—

Instructing to carry out terrorist activity.

- (a) imprisonment for life, in the case of an individual; or
- (b) a fine, in the case of a body corporate.

(2) An offence may be committed under subsection (1) whether or not—

- (a) the terrorist activity is actually carried out;
- (b) the accused instructs a particular person to carry out the terrorist activity;
- (c) the accused knows the identity of the person whom the accused instructs to carry out the terrorist activity; or
- (d) the person whom the accused instructs to carry out the terrorist activity knows that it is a terrorist activity.

Harbouring
or
concealing.

12.—(1) No person shall harbour or conceal, or prevent, hinder or interfere with the apprehension of, any other person whom he knows or has reason to believe has committed or is planning or is likely to commit any terrorist activity.

(2) A person who contravenes subsection (1) commits an indictable offence and shall be liable upon conviction to—

- (a) imprisonment for life, in the case of an individual; or
- (b) a fine, in the case of a body corporate.

Information
about
terrorism
offence.

13.—(1) Subject to subsections (2) and (3), a person commits an offence if that person fails to disclose to a Constable, as soon as is reasonably practicable, any information that comes to that person's attention in the course of his trade, profession or employment and based on which he reasonably believes that another person has committed a terrorism offence.

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

- (a) he had a reasonable excuse for not making the disclosure; or
- (b) where the information referred to in subsection (1) comes to the person in the course of his employment and his employer has an established procedure for the disclosure of the information, the person disclosed the information in accordance with the procedure.

(3) An attorney-at-law shall not be required to disclose any information obtained, or belief based on any information disclosed to him—

- (a) by his client in connection with the provision of legal advice; or
- (b) by any person for the purpose of actual or contemplated legal proceedings,

and not being a disclosure with a view to furthering a criminal purpose.

(4) A person who commits an offence under this section is liable upon summary conviction in a Resident Magistrate's Court to

a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment.

Orders, Reports and Warrants

14.—(1) The Director of Public Prosecutions shall apply to a Judge of the Supreme Court, in Chambers, for an order under subsection (4) in respect of an entity, if—

Order in respect of listed entity.

- (a) the entity is included on a list of entities designated as terrorist entities by the United Nations Security Council; and
- (b) the Director of Public Prosecutions has reasonable grounds to believe that the entity—
 - (i) has knowingly committed or participated in the commission of a terrorism offence; or
 - (ii) is knowingly acting on behalf of, at the direction of, or in association with, an entity referred to in paragraph (a).

(2) Before acting under subsection (1), the Director of Public Prosecutions shall make such investigations as he considers necessary.

(3) An application under subsection (1) shall be—

- (a) *ex parte*; and
- (b) accompanied by an affidavit deposing to the matters referred to in—
 - (i) subsection (1) (a); and
 - (ii) subsection (1) (b) (i) or (ii).

(4) Upon an application under subsection (1) the Judge shall, by order, declare an entity to be a listed entity for the purposes of this Act if the Judge is satisfied as to the matters referred to in—

- (a) subsection (1) (a); and
- (b) subsection (1) (b) (i) or (ii).

(5) Where an order is made under subsection (4), (7) (d), or (10), the Director of Public Prosecutions shall, within seven days after the date of the order, cause to be published in a daily newspaper in circulation in the Island—

- (a) a copy of the order; and
- (b) in the case of an order under subsection (4), a statement that the matter will be reviewed every six months.

(6) Within sixty days after the date of publication of an order under subsection (5), the entity in respect of which the order is made may apply to a Judge of the Supreme Court for a review of the order and shall notify the Director of Public Prosecutions of the application.

(7) Upon an application made under subsection (6), the Judge shall—

- (a) hear any evidence or other information that may be presented by the Director of Public Prosecutions and may, at the request of the Director of Public Prosecutions, hear all or part of that evidence or information in the absence of the applicant or any counsel representing the applicant, if the Judge is of the opinion that the disclosure of the information would be prejudicial to national security or endanger the safety of any person;
- (b) provide the applicant with a statement summarizing the information available to the Judge, so as to enable the applicant to be reasonably informed of the reasons for the making of the order, without disclosing any information the disclosure of which would, in the opinion of the Judge, be prejudicial to national security or endanger the safety of any person;
- (c) provide the applicant with a reasonable opportunity to be heard; and
- (d) determine whether or not the order should be revoked on the basis of the information available to the Judge and, if

he determines that the order should be revoked, make an order for such revocation.

(8) For the purposes of any application or review under this section, the Judge may receive in evidence anything that, in the opinion of the Judge is reliable and relevant, even if it would not otherwise be admissible evidence in law.

(9) The Director of Public Prosecutions, shall, every six months—

- (a) review all orders made under subsection (4) so as to determine whether the circumstances referred to in subsection (1)(a) or (b) continue to exist in respect of the listed entity; and
- (b) if he determines that such circumstances no longer exist, apply to a Judge of the Supreme Court for the revocation of the order in respect of the listed entity.

(10) Upon an application under paragraph (b) of subsection (9), the Judge shall, if satisfied as to the matters referred to in that paragraph, make an order for the revocation.

15.—(1) In this section and sections 16 to 18 “designated authority” means the Director of Public Prosecutions or such other person as the Minister may designate by order.

Duty of entities to report.

(2) The following entities shall determine on a continuing basis whether they are in possession or control of property owned or controlled by or on behalf of a listed entity—

- (a) foreign companies in respect of their business in Jamaica relating to banking, securities, insurance, investment advice or trusts;
- (b) financial institutions;
- (c) any entity designated by the Minister, by order subject to affirmative resolution, as an entity to which the provisions of this section shall apply.

(3) Every entity referred to paragraph (2) shall report to the designated authority at least once in every four calendar months, or in response to a request made to it by the designated authority, either—

- (a) that it is not in possession or control of any property referred to in subsection (2); or
- (b) that it is in possession or control of such property, in which case it shall also report the number of persons, contracts or accounts involved and the total value of the property.

(4) In making a report under subsection (3) the entity shall comply with such directions as may be given by the designated authority.

(5) No criminal or civil proceedings shall lie against a person who makes a report in good faith under subsection (3).

(6) An entity that makes a report under subsection (3) to the designated authority shall not disclose the existence of that report to any other person.

(7) A person who contravenes any of the provisions of this section commits an offence and shall be liable on summary conviction in a Resident Magistrate's Court to—

- (a) in the case of an individual, a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment; or
- (b) in the case of a body corporate, a fine not exceeding three million dollars.

(8) In proceedings against a person for an offence against this section, it is a defence for the person charged that he had a reasonable excuse for not making the report required under subsection (3).

16.—(1) This section applies to every entity referred to in any of paragraphs (a) to (c) of section 15(2).

(2) The entity shall, in relation to each customer, pay special attention to all complex, unusual or large transactions, or unusual patterns of transactions whether completed or not, which appear to the entity to be inconsistent with the normal transactions carried out by that customer with the entity.

(3) Each entity shall promptly report to the designated authority, all complex, unusual or large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose.

(4) An entity which fails to comply with subsection (3) commits an offence and is liable on summary conviction in a Resident Magistrate's Court to—

- (a) in the case of an individual, a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment; or
- (b) in the case of a body corporate, a fine not exceeding three million dollars.

(5) In proceedings against a person for an offence under this section, it is a defence for the person charged that he had a reasonable excuse for not making the report required under subsection (3).

(6) Where a member of staff of the entity, other than an officer referred to in section 18(3), is charged with an offence under this section, it is a defence for that member of staff that he disclosed the information or other matter in question to that officer in accordance with the procedures established pursuant to section 18.

(7) Where a report is made in accordance with subsection (3), the financial institution concerned, its directors and employees shall be exempt from—

- (a) any liability to prosecution for an offence under section 4, 5 or 6;
- (b) any criminal, civil or administrative liability, as the case may be, for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision,

regardless of the outcome of the report.

17.—(1) A person commits an offence if, knowing or suspecting that a designated authority is acting or is proposing to act, in connection

(6) An entity which contravenes subsection (1) or (3) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars.

Monitoring
orders

19.—(1) The Director of Public Prosecutions may apply to a Judge in Chambers in accordance with subsection (3) for an order (in this section and section 20 referred to as a “monitoring order”) directing a financial institution to give a constable named by the Director of Public Prosecutions in the application, information and such documents as are specified in the application, other than items subject to legal privilege.

(2) The constable referred to in subsection (1) shall be a constable designated in writing by the Commissioner of Police.

(3) An application under subsection (1) shall be made *ex parte* and shall be in writing and be accompanied by an affidavit.

(4) A monitoring order shall direct a financial institution to disclose information or to produce documents, or both, obtained by or under the control of the institution about transactions conducted through an account held by a particular person with the institution.

(5) Subject to subsection (6), a monitoring order shall apply in relation to transactions conducted during the period specified in the order, being a period commencing not earlier than the day on which notice of the order is given to the financial institution and ending no later than three months after the date of the order.

(6) The Director of Public Prosecutions may apply, at any time while the order remains in force, for an extension of the period mentioned in subsection (5).

(7) A Judge shall not make a monitoring order in respect of any account unless he is satisfied that—

- (a) the person in respect of whose account the information is, or documents are, sought—
 - (i) has committed or is about to commit a terrorism offence; or

(ii) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of such an offence;

- (b) proceeds from the account have been used or are about to be used directly or indirectly to facilitate the commission of a terrorism offence; or
- (c) proceeds realised directly or indirectly from the commission of a terrorism offence have been credited to the account.

(8) A monitoring order shall specify—

- (a) the name or names, if known, in which the account is believed to be held;
- (b) the class of information and a description of any documents that the institution is required to give; and
- (c) the name of the constable to whom the information is, or documents are, to be given.

(9) A financial institution that is notified of a monitoring order and knowingly—

- (a) contravenes the order; or
- (b) provides false or misleading information or documents in purported compliance with the order,

commits an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars, in the case of an individual, or a fine not exceeding three million dollars in the case of a body corporate.

(10) A reference in this section to a transaction conducted through an account includes a reference to—

- (a) the making of a fixed term deposit or a financial investment;
- (b) in relation to a fixed term deposit, the transfer of the amount deposited or any part thereof at the end of the term; and
- (c) the opening, existence or use of a deposit box held by the institution.

(11) Nothing in sections 4 (providing, making available, etc. property or services for terrorist purposes), 5 (using or possessing

property for terrorist purposes) or 6 (prohibition against dealing in property) shall apply to a financial institution that is subject to a monitoring order in so far as that institution continues to conduct business with the person to whom the order relates.

Monitoring orders not to be disclosed.

20.—(1) A financial institution that is, or has been, subject to a monitoring order shall not disclose the existence or the operation of the order to any person except—

- (a) an officer or agent of the institution for the purpose of ensuring that the order is complied with;
- (b) an attorney-at-law, for the purpose of obtaining legal advice or representation in relation to the order.

(2) A person referred to in subsection (1)(a) or (b), to whom disclosure of the existence or operation of a monitoring order has been made, and a constable referred to in section 19(1) shall not—

- (a) disclose the existence or operation of the order except to another person referred to in that subsection for the purpose of—
 - (i) the performance of that person's duties, if the disclosure is made by the constable referred to in section 19(1);
 - (ii) ensuring that the order is complied with or obtaining legal advice or representation in relation to the order, if the disclosure is made by an officer or agent of the institution; or
 - (iii) giving legal advice or making representations in relation to the order, if the disclosure is made by an attorney-at-law; or
- (b) make a record of or disclose the existence or the operation of the order in any circumstances even when he ceases to be a person referred to in subsection (1).

(3) Nothing in subsection (2) prevents the disclosure by a person referred to in subsection (1)(b) of the existence or operation of a monitoring order—

- (a) for the purposes of, or in connection with, legal proceedings; or

(b) in the course of proceedings before a Court.

(4) A person referred to in subsection (1)(b) shall not be required to disclose to any Court the existence or operation of a monitoring order.

(5) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction in a Resident Magistrate's Court—

(a) in the case of an individual, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment;

(b) in the case of a body corporate, to a fine not exceeding three million dollars.

(6) A reference in this section to disclosing the existence or operation of a monitoring order to a person includes a reference to disclosing information to the person from which that person could reasonably be expected to infer the existence or operation of the monitoring order.

21.—(1) The Director of Public Prosecutions may, if the conditions referred to in subsection (2) are met, apply for—

Examination
and
production
orders.

(a) an order that information or documents be made available for examination; or

(b) a production order.

(2) The conditions referred to in subsection (1) are that the Director of Public Prosecutions has reasonable grounds for suspecting that—

(a) a terrorism offence has been, is being, or is likely to be committed; and

(b) an entity has possession or control of any information or document relevant to the commission or likely commission of the terrorism offence.

(3) An application under this section shall be made *ex parte* in writing to a Judge in Chambers and shall be accompanied by an affidavit, sworn on the information and belief of the Director of Public

Prosecutions or a person designated by the Director of Public Prosecutions for that purpose, deposing to the following matters—

- (a) the offence under investigation;
- (b) the entity or property, as the case may be, in relation to which the information or documents referred to in paragraph (c) are required;
- (c) the type of information or documents in respect of which disclosure or production is sought and the form in which they should be disclosed or produced; and
- (d) the facts relied on to justify the suspicion, on reasonable grounds, that—
 - (i) the entity referred to in paragraph (b) has committed or is likely to commit a terrorism offence; or
 - (ii) the property referred to in that paragraph has been used or is likely to be used to commit such an offence,

and that the information or documents referred to in paragraph (c) are likely to be of substantial value, whether alone or together with other material, to an investigation in respect of that offence.

(4) Subject to any conditions that the Judge considers advisable in the public interest, the Judge to whom an application is made under subsection (1) may order any entity having possession or control of the information or documents referred to in subsection (3)(c) to—

- (a) make the information or documents available for examination by a constable named in the order; or
- (b) produce the information or documents to the constable:

Provided that the order shall not require the constable to remove or retain any accounting records (including ledgers, daybooks, cash books and account books) used in the ordinary business of banking, but may allow the constable to examine or copy them wherever they are located.

(5) Where any information or document is made available for examination or is produced to a constable pursuant to subsection (4)—

- (a) in the case of any information or document made available for examination, the constable may examine, take extracts from, or make copies of the information or document; or
- (b) in the case of any information or document produced, the constable may—
 - (i) examine, take extracts from, or make copies of the information or document; or
 - (ii) retain the information or document, if and for so long as, its retention is reasonably necessary for the purposes of this Act.

(6) Where a constable retains any information or document pursuant to an order made under this section, the constable shall give to the entity in respect of whom the order is made—

- (a) a receipt for the information or document, as the case may be; and
- (b) a copy of the information or document, as the case may be, certified by the constable in writing to be a true copy of the information or document.

(7) An entity in respect of which an order is made under subsection (4) shall comply with the order within the period specified in the order:

Provided that the Judge may, on the application of that entity, extend the time allowed for complying with the order.

(8) An order under subsection (4) requiring an entity to make available or produce information or documents—

- (a) may provide for such assistance as the constable may require to execute the order;
- (b) shall specify the time and place in which the information or documents are to be made available or produced, as the case may be; and

- (c) shall be served on the person in respect of whom it is made, in the manner that the Judge directs or as may be prescribed by rules of court.

(9) A person in respect of whom an order is made under this section requiring the production of a document, may apply to a Judge in Chambers, for a variation of the order on the ground that the document is essential to the business activities of that person.

(10) The person in respect of whom the order is made may, by application to a Judge in Chambers, object to the disclosure of any information or document on the ground that—

- (a) a privilege is attached by law to the information or document; or
- (b) disclosure of the information or document would not, for any other reason, be in the public interest.

(11) An application under subsection (9) or (10) shall be made within five days after the date of service of the order, or within such greater period, having regard to the peculiar circumstances of the case, as the Judge may specify in the order.

(12) In determining an application under subsection (9) or (10), the Judge may, if he considers it necessary, examine the information or document in relation to which the application is made and, the Judge shall—

- (a) in the case of an application under subsection (9), if satisfied as to the ground mentioned in that subsection, grant the application and order that the entity make the document available to the constable pursuant to subsection (4)(a); or
- (b) in the case of an application under subsection (10), if satisfied as to any of the grounds mentioned in that subsection, grant the application and order that disclosure or production be refused.

(13) Where any information or document is copied pursuant to subsection (5), any such copy that is certified by a Resident Magistrate to be a copy made under that subsection is evidence of the nature and content of the original information or document and

has the same probative value as the original information or document would have if it had been proved in the ordinary way.

(14) A Resident Magistrate shall not certify any copy under subsection (13) unless the Resident Magistrate has seen or heard, as the case may require, the original information or document.

(15) In the case of—

- (a) accounting records referred to in subsection (4); or
- (b) a document in respect of which a production order is varied pursuant to subsection (12)(a),

a Resident Magistrate may, for the purpose of complying with subsection (14), order the entity having possession or control of the records to produce the records at such time and place as the Resident Magistrate considers appropriate to prevent or minimise any disruption to the business in which the records are used.

22.—(1) An entity commits an offence if—

- (a) without reasonable excuse, it fails to comply with an order made under section 21; or
- (b) in purported compliance with such an order, it produces or makes available any information or document that it knows to be false or misleading in a material particular and the entity does not—
 - (i) indicate, to the constable to whom the information or document is produced or made available, that the information or document is false or misleading; and
 - (ii) provide to that constable such correct information as it has in its possession or as it can reasonably acquire.

Failure to comply with examination or production order.

(2) An entity which commits an offence under subsection (1) is liable on summary conviction before a Resident Magistrate to—

- (a) in the case of an individual, a fine not exceeding one million dollars or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment; or

- (b) in the case of a body corporate, a fine not exceeding three million dollars.

Warrant to search premises for applicable property

23.—(1) Subject to subsection (3), where a Resident Magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that applicable property is to be found on any premises specified in the information, he may issue a search warrant in accordance with subsection (2).

(2) The warrant mentioned in subsection (1) may authorize a constable named in the warrant to enter the premises specified in the warrant, with such assistance and by such force as is necessary and reasonable to—

- (a) enter upon the premises;
- (b) search the premises for applicable property;
- (c) seize property found in the course of the search that the constable believes, on reasonable grounds, to be applicable property.

(3) A warrant shall not be issued under this section unless the informant or some other person has given to the Justice of the Peace, on oath, any further information that the Justice of the Peace may require concerning the grounds on which the issue of the warrant is sought.

(4) A warrant issued under this section shall include—

- (a) a statement of the purpose for which the warrant is issued, and a reference to the nature of the terrorism offence;
- (b) a description of the kind of property to be seized;
- (c) the time, not being later than twenty-eight days, upon the expiration of which the warrant ceases to have effect; and
- (d) a statement as to whether entry is authorized to be made at any time of the day or night, or during the specified hours of the day or night.

Other applicable property may be seized

24.—(1) A warrant issued pursuant to section 23 shall be deemed to authorize the constable to seize property that he believes, on reasonable grounds, to be applicable property—

- (a) in relation to the terrorism offence, although not of a kind specified in the warrant; or

(b) in relation to another terrorism offence,
if the constable believes, on reasonable grounds, that it is necessary to seize that property in order to prevent its concealment, loss or destruction or its use in connection with the offence specified as aforesaid or any other offence.

25.—(1) A constable who executes a warrant issued under section 23 shall— Record of property seized.

- (a) detain the property seized, taking reasonable care to ensure that it is preserved so that it may be dealt with in accordance with this Act;
- (b) upon the execution of the warrant, prepare a list of the property seized and give a copy thereof to the owner or occupier of the premises who is present at the time of the seizure; and
- (c) as soon as is practicable after the execution of the warrant, but within a period of seventy-two hours thereafter, prepare a written report, identifying the property seized and the location where the property is being detained and send a copy of the report to the Clerk of Courts in that location.

(2) The Clerk of Courts referred to in subsection (1)(c) shall furnish a copy of the report to—

- (a) the person from whom the property was seized;
- (b) the designated authority; and
- (c) any other person who appears to the Clerk of Courts to have an interest in the property.

26.—(1) Where property is seized otherwise than because it may afford evidence as to the commission of a terrorism offence, any person who claims an interest in the property may apply to the Court for an order that the property be returned to him. Return of property seized.

(2) Where application is made under subsection (1) the Court shall order the return of the property to the applicant if the Court is satisfied that—

- (a) the applicant is entitled to possession of the property;

- (b) the property is not applicable property in relation to a terrorism offence; and
- (c) the person in respect of whose conviction, charging or proposed charging the seizure was made, has no interest in the property.

(3) Subject to section 27, the property shall be returned to the person from whose possession it was seized, as soon as practicable after the end of a period of seventy-two hours after seizure if at the end of that period an information has not been laid in respect of a terrorism offence.

Retention of
property
seized.

27.—(1) Subject to subsections (2) and (3), where property is seized under section 23 otherwise than because it may afford evidence as to the commission of a terrorism offence and—

- (a) but for this subsection, the property would be returned to a person as soon as is practicable after a particular period; and
- (b) before the end of that period, a restraint order is made in relation to the property,

it shall be dealt with in accordance with the restraint order or with any other provision of this Act.

(2) If, at the time when a restraint order is made against property referred to in subsection (1), the property is in the possession of the Commissioner of Police, the Commissioner of Police may apply to the Court that made the restraint order for an order that he retain possession of the property.

(3) The Court may, if satisfied that there are reasonable grounds for believing that the property may afford evidence as to the commission of a terrorism offence, make an order that the Commissioner of Police retain the property for so long as it is required as evidence as to the commission of a terrorism offence.

(4) In any proceedings on an application under subsection (2), a witness shall not be required to answer any question or to produce any document if the Court is satisfied that the answering of the question or the production of the document may prejudice the investigation of, or the prosecution of a person for, an offence.

(5) Where an application for a restraint order has been refused in relation to property referred to in subsection (1) and, at the time of such refusal, the property is in the possession of the Commissioner of Police the property shall, as soon as practicable after the refusal, be returned to the person from whose possession it was seized.

(6) Where property is seized under section 23 and, while the property is in the possession of the Commissioner of Police, a forfeiture order is made in respect thereof, the property shall be dealt with in accordance with the forfeiture order.

28.—(1) The Director of Public Prosecutions may make an application to the Court for an order of forfeiture in respect of applicable property wherever situate, whether inside or outside of Jamaica. Order of forfeiture.

(2) Where the Director of Public Prosecutions makes an application under subsection (1)—

- (a) he shall—
 - (i) give no less than fourteen days' written notice of the application to the entity convicted of the terrorism offence and to any other person who the Director of Public Prosecutions has reason to believe may have an interest in the property; and
 - (ii) publish a copy of the notice in the *Gazette* and in a daily newspaper printed and circulated in Jamaica;
- (b) the entity convicted of the terrorism offence and any other person who claims an interest in the property may appear and adduce evidence at the hearing of the application;
- (c) the Court, at any time before the final determination of the application—
 - (i) shall make an order for a valuation to be carried out in relation to the property and give such ancillary directions as the Court considers necessary for that purpose; and

- (ii) may direct the Director of Public Prosecutions to give notice of the application to any person who, in the opinion of the Court, appears to have an interest in the property.

(3) Where an application is made under subsection (1), the Court may—

- (a) in determining the application, have regard to the transcript of any proceedings against the entity for the offence;
- (b) if satisfied that the property in respect of which the application is made is applicable property, order that the property or such part thereof as the Court may specify in the order, be forfeited to the Crown.

(4) Where the Court orders that property, other than money, be forfeited to the Crown, the Court shall specify in the order the amount representing the value of the property pursuant to a valuation carried out under subsection (2)(c)(i).

(5) In considering whether a forfeiture order should be made under subsection (1) the Court shall have regard to—

- (a) the rights and interests, if any, of third parties in the property;
- (b) the gravity of the offence concerned;
- (c) any hardship that may reasonably be expected to be caused to any person by the operation of the order; and
- (d) the use that is ordinarily made of the property, or the intended use of the property.

(6) Where the Court makes a forfeiture order under subsection (1), the Court may give such directions as are necessary or convenient for giving effect to the order.

(7) The Director of Public Prosecutions may, in accordance with rules of court, appeal against a decision of the Court to refuse an application under subsection (1) .

Amendment
of
application.

29.—(1) The Court hearing an application under section 28(1) (hereafter in this section referred to as the original application) may, before final determination thereof, and on the application of the Director

of Public Prosecutions, amend the original application to include any other property, upon being satisfied that—

- (a) the property was not reasonably capable of identification when the original application was made; or
- (b) necessary evidence became available only after the original application was made.

(2) Where the Director of Public Prosecutions applies to amend an original application and the amendment would have the effect of including additional property in the original application, he shall give not less than fourteen days' written notice of the application to amend to any person who he has reason to believe may have an interest in the property to be included in the original application.

(3) Any person who claims an interest in the property to be included in the original application may appear and adduce evidence at the hearing of the application to amend.

30.—(1) Subject to subsection (2), where the Court makes a forfeiture order against any property, the property vests absolutely in the Crown by virtue of the order.

Effect of forfeiture order.

(2) Where such property is subject to the Registration of Titles Act—

- (a) the property vests in the Crown in equity but not at law until the applicable registration requirements have been complied with;
- (b) the Crown is entitled to be registered as owner of the property;
- (c) the Commissioner of Lands has power on behalf of the Crown to do, or authorize the doing of, anything necessary or convenient to obtain the registration of the Crown as owner, including the execution of any instrument required to be executed by a person transferring an interest in that kind of property.

(3) Where the Court makes a forfeiture order against property—

- (a) the property shall not, except with the leave of the Court and in accordance with any directions of the Court, be

disposed of, or otherwise dealt with, by or on behalf of the Crown, before the relevant appeal date;

- (b) if, after the relevant appeal date, the order has not been discharged, the property may be disposed of and the proceeds applied or otherwise dealt with in accordance with the directions of the Attorney-General.

(4) Without prejudice to the generality of subsection (3)(b), the directions that may be given pursuant thereto include a direction that property is to be disposed of in accordance with the provisions of any enactment specified in the direction.

(5) In this section, “relevant appeal date” means—

- (a) the date on which the period allowed by the rules of court for the lodging of an appeal against a person’s conviction, or against the making of a forfeiture order, expires without an appeal having been lodged, whichever is the later; or
- (b) where the appeal against a person’s conviction or against the making of a forfeiture order is lodged, the date on which the appeal lapses in accordance with the rules of court or is finally determined, whichever is the later.

(6) A forfeiture order under this Act shall not affect the operation of the provisions of any other law respecting the forfeiture of property.

(7) Property is subject to forfeiture under section 28 (3)(b) only to the extent that it is not required to satisfy the operation of the provisions of any other law respecting restitution to, or compensation of, persons affected by the commission of offences.

(8) Before making a forfeiture order, the Court may set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the restraint order, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice.

31.—(1) Where an application is made for a forfeiture order against property, a person who claims an interest in the property may, before the forfeiture order is made, apply to the Court for an order under subsection (2).

(2) If, pursuant to subsection (1), a, person applies for an order the Court shall make an order declaring the nature, extent and value (as at the time the order is made) of the person's interest if the Court is satisfied—

- (a) that the person was not in any way involved in the commission of the offence; and
- (b) where the person acquired the interest during or after the commission of the offence, that he acquired the interest—
 - (i) for sufficient consideration; and
 - (ii) without knowing, or having reasonable grounds to suspect, that at the time he acquired it, the property was used in, or derived, obtained or realized directly or indirectly from, the commission of a terrorism offence.

(3) Subject to subsection (4), where a forfeiture order has already been made against property, a person who claims an interest in the property may, before the end of the period of three months commencing on the day on which the forfeiture order is made or such longer period as the Court may, having regard to all the circumstances, allow, apply under this subsection to the Court for an order under subsection (2).

(4) A person who—

- (a) had knowledge of the application for the forfeiture order before the order was made; or
- (b) appeared at the hearing of that application,

shall not, except with the leave of the Court, be permitted to make an application under subsection (3) .

(5) A person who makes an application under subsection (1) or (3) shall give not less than fourteen days' written notice thereof to the Director of Public Prosecutions, who shall be a party to any proceedings in respect of the application.

(6) An applicant or the Director of Public Prosecutions may in accordance with rules of court, appeal to the Court of Appeal from an order made under subsection (2).

(7) Where a person has obtained an order under subsection (2) and the period allowed by rules of court with respect to the making of appeals has expired or any appeal from that order made pursuant to subsection (6) has been determined in the person's favour, the Attorney-General shall, on application of that person, direct that—

- (a) the property or the part thereof to which the applicant's interest relates, be returned to the applicant; or
- (b) an amount equal to the value of the applicant's interest, as declared in the order, be paid to the applicant.

Discharge of forfeiture order on appeal or on quashing of conviction.

32.—(1) Where a forfeiture order is made in respect of a person's conviction of a terrorism offence and the conviction is subsequently quashed, the quashing of the conviction discharges the order.

(2) Where a forfeiture order is discharged as provided in subsection (1) or, as the case may be, by the Court on an appeal against the order, any person who claims to have had an interest in the property immediately before the making of the forfeiture order, may apply to the Attorney-General in writing for the return or, as the case may be, the transfer of the interest to him.

(3) On the receipt of an application under subsection (2), the Attorney-General shall—

- (a) if the interest is still vested in the Crown, direct that the property or part thereof to which the applicant's interest relates, be transferred or returned to the applicant; or
- (b) in any other case, direct that there be payable to the applicant, an amount equal to the value of the interest at the time when the order is made.

(4) In the exercise of the powers conferred by this section and section 31, the Attorney-General shall have power to do or authorize the doing of anything necessary or convenient to effect the transfer or return of property, including the execution of any instrument and the making of an application for the registration of an interest in the property.

33.—(1) A person who has an interest in property against which a forfeiture order is made may appeal against that order—

Appeals
against
forfeiture
orders.

- (a) in the case of a person convicted of the terrorism offence in respect of which the order was made, in the same manner as if the order were, or were part of, a sentence imposed on that person in respect of that offence; or
- (b) in any other case, in the same manner as if the person had been convicted of the terrorism offence in respect of which the order was made and the order were, or were part of, a sentence imposed on that person in respect of that offence.

(2) Nothing in this section shall be taken to affect any right of appeal that a person would have apart from this section.

34.—(1) Where a person (in this section and section 35 called “the defendant”) has been—

Application
for restraint
order.

- (a) convicted of a terrorism offence; or
- (b) charged with a terrorism offence,

the Director of Public Prosecutions may apply to the Court for a restraint order against any property in respect of which a forfeiture order may be made under section 28 (3)(b).

(2) An application for a restraint order may be made *ex parte* and shall be in writing and be accompanied by an affidavit stating—

- (a) where the defendant has been convicted of a terrorism offence, the terrorism offence for which the defendant was convicted, the date of the conviction, the Judge before whom the conviction was obtained and whether an appeal has been lodged against the conviction;
- (b) where the defendant has been charged with a terrorism offence, the terrorism offence for which he is charged and the grounds for believing that the defendant committed the offence;
- (c) a description of the property in respect of which the restraint order is sought;

- (d) the name and address of the person who is believed to be in possession of the property;
- (e) the grounds for believing that the property is applicable property in relation to the offence;
- (f) where the application seeks a restraint order against a person other than the defendant, the grounds for believing that the property is applicable property in relation to the offence or is subject to the effective control of the defendant; and
- (g) the grounds for believing that a forfeiture order may be or is likely to be made under this Act.

Restraint
orders.

35.—(1) Subject to this section, the Court may, on the application of the Director of Public Prosecutions, make a restraint order against property wherever situate, whether inside or outside of Jamaica, if the Court is satisfied that—

- (a) the defendant has been convicted of a terrorism offence;
- (b) the defendant is charged with a terrorism offence and there are reasonable grounds for believing that the defendant committed the offence;
- (c) there are reasonable grounds for believing that the property is applicable property in relation to the terrorism offence for which the defendant is convicted or charged;
- (d) where the application seeks a restraint order against property of a person other than the defendant, there are reasonable grounds for believing that the property is applicable property in relation to the terrorism offence for which the defendant is convicted or charged or that the property is subject to the effective control of the defendant; or
- (e) there are reasonable grounds for believing that a forfeiture order is likely to be made under this Act.

(2) A restraint order may—

- (a) prohibit the defendant or any other person from disposing of, or otherwise dealing with, the property or such part

thereof or interest therein as is specified in the order, except in such manner as may be specified in the order; and

- (b) at the request of the Director of Public Prosecutions, where the Court is satisfied that the circumstances so require—
 - (i) direct such person as the Court may appoint to take custody of the property or such part thereof as is specified in the order and to manage or otherwise deal with all or any part of the property in accordance with the directions of the Court; and
 - (ii) require any person having possession of the property to give possession thereof to the person appointed under sub-paragraph (i) to take custody of the property.

(3) A restraint order may be made subject to such conditions as the Court thinks fit and, without limiting the generality of the foregoing, may make provision for meeting out of the property, or a specified part of the property, all or any of the following—

- (a) the person's reasonable living expenses including the reasonable living expenses of the person's dependants (if any) and reasonable business expenses;
- (b) the person's reasonable expenses in defending the criminal charge and any proceedings under this Act.

(4) In determining whether there are reasonable grounds for believing that property is subject to the effective control of the defendant, the Court may have regard to—

- (a) shareholding in, debentures over or directorships in, any company that has an interest (direct or indirect) in the property, and for this purpose the Court may order the investigation and inspection of the books of a company named in the order;
- (b) any trust that has a relationship with the property;

- (c) any relationship between persons having interests in the property or in such company or trusts as is referred to in paragraph (a) or (b), and any other persons.

(5) Where a person appointed under subsection (2)(b)(i) is given a direction in relation to any property, that person may apply to the Court for directions on any question respecting the management or preservation of the property concerned.

(6) An application under subsection (5) shall be served upon all persons interested in the application or such of them as the Court thinks expedient, and all such persons shall be entitled to appear and be heard at the hearing.

(7) A person appointed under subsection (2)(b)(i) shall, in acting on directions given by the Court, be deemed to have discharged his duty in the subject-matter of the application.

Undertakings
by Crown.

36.—(1) Before making an order under section 35, the Court may require the Crown to give such undertakings as the Court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making and execution of the order.

(2) For the purposes of this section, the Director of Public Prosecutions may, after consultation with the Attorney-General, on behalf of the Crown, give to the Court such undertakings with respect to the payment of damages or costs, or both, as are required by the Court.

Notice of
application
for restraint
order.

37. Before making a restraint order, the Court may require notice to be given to, and may hear, any person who, in the opinion of the Court, appears to have an interest in the property, unless the Court is of the opinion that giving such notice before making the order would result in the disappearance, dissipation or reduction in the value of the property.

Service of
restraint
order

38. A copy of a restraint order shall be served on a person affected by the order in such manner as the Court directs or as may be prescribed by rules of Court.

Registration
of restraint
order

39.—(1) A copy of a restraint order that affects registered land in Jamaica shall be registered with the Registrar of the Supreme Court and with the Registrar of Titles who shall record the particulars of the order in the Register Book of Titles.

(2) A restraint order is of no effect with respect to registered land unless it is so registered.

(3) Where particulars of a restraint order are registered as required by this section, a person who subsequently deals with the property concerned shall, for the purposes of section 31, be deemed to have notice of the order at the time of the dealing.

(4) The registration of a restraint order under this section shall be exempt from the payment of fees under the Registration of Titles Act and stamp duty under the Stamp Duty Act.

40.—(1) A person who knowingly contravenes a restraint order by disposing of, or otherwise dealing with, property that is subject to the restraint order commits an offence and is liable—

Contravention
of restraint
order.

(a) on summary conviction in a Resident Magistrate's Court—

(i) in the case of an individual, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment; or

(ii) in the case of a body corporate, to a fine not exceeding three million dollars;

(b) on conviction on indictment in a Circuit Court—

(i) in the case of an individual, to a fine or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment; or

(ii) in the case of a body corporate, to a fine.

(2) Where a restraint order is made against property and—

(a) the property is disposed of or otherwise dealt with in contravention of the restraint order; and

(b) the disposition or dealing was not for sufficient consideration or not in favour of a person who acted in good faith and without notice,

the Director of Public Prosecutions may apply to the Court for an order that the disposition or dealing be set aside.

(3) The Court may, on the application of the Director of Public Prosecutions under subsection (2), set aside the disposition or dealing—

(a) as from the day on which the disposition or dealing took place; or

(b) as from the day of the order under this subsection,

and declare the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place, and before the day of the order under this subsection.

Duration of restraint order.

41.—(1) A restraint order remains in force until—

(a) it is revoked under section 42 or 44;

(b) it ceases to be in force under section 43;

(c) a forfeiture order is made in respect of the property that is the subject of the order; or

(d) the property that is the subject of the order becomes forfeited to the Crown under any other enactment.

(2) A restraint order shall cease to be in force in respect of any property or interest therein or any part thereof which is excluded from its application pursuant to section 42 (5).

Review of restraint orders and search warrants

42.—(1) A person who has an interest in property in respect of which a restraint order is made or that was seized under a warrant issued pursuant to section 23 may, at any time, apply to the Court—

(a) for an order under subsection (5); or

(b) for permission to examine the property.

(2) An application under subsection (1) shall not be heard by the Court unless the applicant has given the Director of Public Prosecutions not less than three days' notice in writing of the application.

(3) The Court may require notice of the application to be given to, and may hear, any person who, in the opinion of the Court, appears to have an interest in the property.

(4) On an application under subsection (1)(a) in respect of any property, the Court may act in accordance with subsection (5) after hearing the applicant, the Director of Public Prosecutions or any other person who is notified under subsection (3).

(5) For the purposes of subsection (4), the Court may order that the property or any part thereof be returned to the applicant or, in the case of a restraint order, revoke the order or vary it to exclude the property or any interest therein or any part thereof from the application of the order, or make the order subject to such conditions as the Court thinks fit—

- (a) if the applicant enters into a recognizance before the Court, with or without sureties, in such amount and with such conditions, as the Court directs, and where the Court considers it appropriate, deposits with the Court such sum of money or other valuable security as the Court directs;
- (b) if the conditions referred to in subsection (6) are satisfied; or
- (c) for the purpose of —
 - (i) meeting the reasonable living expenses of the person who was in possession of the property at the time the order was made or the warrant was executed or any person who, in the opinion of the Court, has an interest in the property and of the dependants of that person;
 - (ii) meeting the reasonable business or legal expenses of a person referred to in subparagraph (i).

(6) An order under subsection (5) in respect of property may be made if the Court is satisfied that—

- (a) a restraint order should not have been made or a warrant should not have been issued pursuant to section 23, in respect of the property;
- (b) the applicant is the lawful owner, or lawfully entitled to possession, of the property and appears innocent of any

complicity in a terrorism offence or of any collusion in relation to such offence; and

- (c) the property will no longer be required for the purpose of any investigation or as evidence in any proceedings.

(7) On an application to the Court under subsection (1)(b), the Court may order that the applicant be permitted to examine the property subject to such terms as appear to the Court to be necessary or desirable to ensure that the property is safeguarded and preserved for the purpose for which it may subsequently be required.

Automatic expiry of restraint orders.

43.—(1) Subject to this section, a restraint order shall not continue in force for a period of more than six months after the date when the order is made unless, before the expiration of that period, the Director of Public Prosecutions applies to the Court for an extension of the period of operation of the order.

(2) Where the Director of Public Prosecutions makes an application under subsection (1) and the Court is satisfied that a forfeiture order may be made in respect of the property concerned or part thereof, the Court may specify the period of operation of the restraint order and may make such other order as the Court considers appropriate in relation to the operation of the order.

Disposal of property seized or dealt with

44.—(1) Where the Court is satisfied that property will no longer be required for the purposes of—

- (a) section 28(3) (b) (forfeiture order on conviction) ;
- (b) any other enactment providing for forfeiture;
- (c) any Investigation; or
- (d) evidence in any proceedings,

the Court shall, on the application of the Director of Public Prosecutions or any person having an interest in the property, act in accordance with the following subsections.

(2) The Court may revoke any restraint order in respect of the property.

(3) Where the property has been seized under a warrant issued under section 23, or is under the control of a person appointed

pursuant to section 35(2) (b) (i), the Court may order that the property be—

- (a) returned to the person from whom it was taken, if that person's possession of the property is lawful;
- (b) returned to the lawful owner or the person who is lawfully entitled to possession of it if—
 - (i) the person from whom it was taken was not lawfully entitled to possession of it; and
 - (ii) the lawful owner or the person lawfully entitled to its possession is known;
- (c) order that the property be forfeited to the Crown if—
 - (i) possession of it by the person from whom it was taken is unlawful; and
 - (ii) the lawful owner or person lawfully entitled to its possession is not known or cannot upon reasonable enquiry, be ascertained.

General

- 45.** Proceedings in respect of a terrorism offence or an offence under section 13 (failure to report terrorism offence), 15 or 16 (duty of entities to report) shall not be instituted without the consent of the Director of Public Prosecutions.
- 46.** For the purpose of conferring jurisdiction, any offence committed outside of Jamaica shall be deemed to have been committed in any place in Jamaica where the offender may for the time being be, if, had such offence been committed in Jamaica, the offence would be a terrorism offence.
- 47.** The Minister may make regulations, subject to affirmative resolution, generally for giving effect to the provisions and purposes of this Act.
- 48.** The Acts specified in Column A of the Second Schedule are amended in the manner set out in relation thereto in Column B of that Schedule.
- 49.—(1)** The provisions of this Act shall be reviewed by a joint select committee of the Houses of Parliament after the expiration of two years from the appointed date.

Consent of
Director of
Public
Prosecutions.

Extension of
Jamaican
local
criminal
jurisdiction

Regulations

Amendments
to other Acts.
Second
Schedule.

Review of Act
after two
years

(2) Except by order of the Court—

- (a) the validity of any proceedings taken, or any order in force, under this Act immediately before the expiration of the time specified in subsection (1) shall not be affected by any amendment or repeal of any of the provisions of this Act made pursuant to a review conducted under subsection (1); and
- (b) any such proceedings shall be continued and determined, and any such order shall continue in force for such duration, as if such amendment or repeal had not been made."

FIRST SCHEDULE

(Section 3)

Offences
Implementing the
Convention for the
Suppression of
Unlawful Acts
Against the Safety of
Maritime Navigation.

1.—(1) Unlawfully and intentionally seizing or exercising control over a ship by the use or threat of force, violence or any other form of intimidation.

(2) Unlawfully and intentionally—

- (a) committing an act of violence against a person on board a ship, whether or not any physical contact or harm occurs;
- (b) destroying or damaging a ship or the cargo of a ship;
- (c) placing, or causing to be placed, on a ship any device or substance that destroys or damages or is likely to destroy or damage that ship or its cargo;
- (d) destroying or causing serious damage to maritime navigational facilities or causing serious interference with the operation of such facilities;
- (e) communicating false information, knowing such information to be false,

so as to endanger, or create a serious likelihood of endangering, the safe navigation of a ship.

(3) This paragraph shall not apply to—

- (a) a warship;

- (b) a government ship being used as a naval auxiliary or for customs or police purposes; or
- (c) a ship that is laid up or withdrawn from navigation.

(4) The provisions of this paragraph shall not affect any immunity attached to a foreign warship or other government vessel operated for non-commercial purposes.

(5) In this paragraph—

“ship” means a vessel, of any type whatsoever, not permanently attached to the seabed, including dynamically supported craft, submersibles or any other floating craft;

“warship” means a ship—

- (a) that belongs to the armed forces of a State;
- (b) that bears the external marks distinguishing ships of that nationality;
- (c) that is under the command of an officer duly commissioned by the government of the State;
- (d) whose name appears in the appropriate service list or its equivalent; and
- (e) that is manned by a crew which is under regular armed forces discipline.

Offences
implementing the
Protocol for the
Suppression of
Unlawful Acts
Against the Safety of
Fixed Platforms
Located on the
Continental Shelf.

2.—(1) In this paragraph, “fixed platform” means an artificial island, installation or structure permanently attached to the seabed for the purpose of exploration or exploitation of resources or for other economic purposes.

(2) Unlawfully and intentionally seizing or exercising control over a fixed platform by the use or threat of force, violence or any other form of intimidation.

- (3) Unlawfully and intentionally—
 - (a) committing any act of violence against a person on board a fixed platform, whether or not any physical contact or harm occurs;
 - (b) destroying or damaging a fixed platform; or
 - (c) placing or causing to be placed, on a fixed platform any device or substance that is likely to destroy or damage the fixed platform,

so as to endanger, or create a reasonable likelihood of endangering, the safety of the fixed platform.

Offences
implementing the
Convention for the
Suppression of
Terrorist Bombings.

3.—(1) Unlawfully and intentionally delivering, placing, discharging or detonating an explosive or other lethal device in, into or against any public place, State or government facility, public transportation system or infrastructure facility, with the intention of causing—

- (a) death or serious bodily injury to any person; or
- (b) extensive destruction of such place, facility or System, where such destruction results or is likely to result in major economic loss,

or organizing or directing any person to do so.

(2) In this paragraph—

"an explosive or other lethal device" includes—

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

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

"public place" means any highway, street, public park or garden, any sea beach and any public bridge, road, lane, footway, square, court alley or passage, whether a thoroughfare or not, and includes any open space and any premises to which for the time being, the public have or are permitted to have access, whether on payment or otherwise;

"public transportation system" means any mode of conveyance, whether publicly or privately owned, that is used in or for publicly available services for the transportation of persons or cargo;

"State or government facility" includes any permanent or temporary facility or mode of conveyance that is used or occupied, in connection with their official duties, by—

- (a) representatives of a State, members of Government, the legislature or the judiciary; or
- (b) officials or employees of a State, statutory body or intergovernmental organization."

Offences
implementing the
Convention on the
Prevention and
Punishment of Crimes
Against
Internationally
Protected Persons,
Including Diplomatic
Agents.

4.—(1) Unlawfully and intentionally—

- (a) injuring, kidnapping or otherwise attacking any internationally protected person; or
- (b) attacking that person's official premises, private accommodation or means of transport.

(2) For the purposes of this paragraph "internationally protected person" means—

- (a) a Head of State, including any member of a collegial body performing the functions of Head of State under the constitution of the State concerned, a Head of Government or a Minister for Foreign Affairs, whenever any such person is in a foreign State, as well as the members of his family who accompany him;
- (b) any representative or official of a State or any official or other agent of an international organization of an intergovernmental character who, at the time when and in the place where an offence is committed against him, his official premises, his private accommodation or his means of transport, is entitled pursuant to international law to special protection from any attack on his person, freedom or dignity, as well as members of his family forming part of his household.

Offences
implementing the
International
Convention Against
the Taking of
Hostages.

5. Seizing, or detaining, and threatening to kill, injure, or continue to detain, any person in order to compel any entity, State, government or international intergovernmental organization to do or refrain from doing any act as an explicit or implicit condition of the release of the person.

Offences
implementing the
Convention on the
Physical Protection
of Nuclear Materials.

6.—(1) Internationally receiving, possessing, using, transferring, altering or disposing or dispersing of nuclear material—

- (a) without lawful authority; and

(b) which causes or is likely to cause death or serious injury to any person or substantial damage to property.

(2) Stealing, robbing, embezzling or fraudulently obtaining, nuclear material.

(3) Demanding nuclear material by threat, attack or by any other form of intimidation.

(4) Threatening—

(a) to use nuclear material to cause death or serious injury to any person or substantial damage to property; or

(b) to steal or rob nuclear material in order to compel any person, government or international organization to do or refrain from doing any act.

(5) In this paragraph—

“nuclear material” means—

(a) plutonium, except plutonium with isotopic concentration exceeding 80% in plutonium-238;

(b) uranium-233;

(c) uranium containing the isotopes 235 or 233 or both in an amount such that the abundance of the ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature;

(d) uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore-residue; or

(e) any material containing one or more of the materials referred to in paragraphs (a) to (d) .

SECOND SCHEDULE

(Section 48)

Amendments to Other Acts

Column A Act <hr style="width: 10%; margin: auto;"/>	Column B Amendment <hr style="width: 10%; margin: auto;"/>
The Aircraft (Tokyo, Hague and Montreal Conventions) Act.	<p>1. Insert the following as section 17A—</p> <p>"Acts endangering safety at airport.</p> <p>17A.—(1) It shall be an offence for any person to unlawfully and intentionally use any weapon, device or substance to—</p> <p style="padding-left: 40px;">(a) destroy or seriously damage the facilities of an airport or any aircraft that is not in service and is located at an airport;</p> <p style="padding-left: 40px;">(b) disrupt the services of an airport; or</p> <p style="padding-left: 40px;">(c) commit an act of violence against any person at an airport,</p> <p style="padding-left: 40px;">in circumstances that safety at the airport becomes or is likely to become endangered.</p> <p style="padding-left: 40px;">(2) For the purposes of this paragraph, "airport" means an airport that serves international civil aviation."</p> <p>2. In section 18 (1) (a) by inserting next after the words "section 16" the words "or 17A".</p> <p>3. In section 18 (2) by deleting the words "section 16 or 17" and substituting therefor the words "section 16, 17 or 17A".</p>
The Drug Offences (Forfeiture of Proceeds) Act.	<p>1. In section 2(1), in paragraph (b) of the definition of "tainted property", by inserting next after the words "realized directly" the words "or indirectly".</p>

2. In section 3 by inserting the following as subsection (5)—

“ (5) The Director of Public Prosecutions may, in accordance with rules of court, appeal against the Judge’s decision to refuse an application for a forfeiture order under this section.”.

3. In section 4(1) by deleting paragraph (c) and substituting therefor the following—

“(c) the Judge, at any time before the final determination of the application—

(i) shall make an order for a valuation to be carried out in relation to the property, and give such ancillary directions as the Judge considers necessary for that purpose; and

(ii) may direct the Director of Public Prosecutions to give notice of the application to any person who, in the opinion of the Judge, appears to have an interest in the property.”.

4. In section 6 by deleting subsection (2).

5. In section 7(2) by deleting the words “that he considers to be the value of the property at the time when the order is made” and substituting therefor the words “representing the value of the property pursuant to a valuation carried out under section 4(1) (c) (i)”.

6. In section 10(3) by deleting the word “six” and substituting therefor the word “three”.

7. In section 36(1) by deleting the words “that made the order”.

The Extradition Act.

1. In section 2, in the definition of “treaty State” by deleting paragraphs (b) and (c) and inserting the following as paragraph (b)—

“ (b) a contracting party to a Convention specified in Column A of the Schedule, in

so far as specified in relation thereto in Column B of the Schedule.”.

2. In section 5 by inserting the following as subsection (3)—

“ (3) A terrorism offence as defined by section 2 of the Terrorism Prevention Act is an extradition offence for the purposes of this Act and shall be deemed to be committed within the jurisdiction of any treaty State that appears to a Court in Jamaica, having regard to the provisions of the Conventions referred to in Column A of the Schedule, to be appropriate.”.

Schedule.

3. By inserting the following as the Schedule—

" SCHEDULE (Sections 2 and 5)	
Column A	Column B
1. The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973.	1. In so far as Article 8 of that Convention requires.
2. The International Convention Against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979.	2. In so far as Article of that Convention requires.
3. The International Convention for the Suppression of Terrorist Financing, adopted by the General Assembly of the United Nations on December 9, 1999.	3. In so far as Article 11 of that Convention requires.

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|--|---|
| 4. The Convention on the Physical Protection of Nuclear Material, adopted at Vienna on October 26, 1979. | 4. In so far as Article 11 of that Convention requires. |
| 5. The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on March 10, 1988. | 5. In so far as Article 11 of that Convention requires. |
| 6. The Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on March 10, 1988. | 6. In so far as Article 1 of that Convention requires. |
| 7. The International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997. | 7. In so far as Article 9 of that Convention requires. |
| 8. The Convention on the Physical Protection of Nuclear Material, signed at New York and Vienna on March 3, 1980. | 8. In so far as Article 11 of that Convention requires. |
| 9. The Hague Convention. | 9. In so far as Article 8 of that Convention requires. |
| 10. The Montreal Convention and the Montreal Protocol to that Convention. | 10. In so far as Article 8 of that Convention requires.". |

The Interception of Communications Act.

1. In subsection (1) of section 2 by deleting the definition of "terrorism" and by inserting next after

the definition of “telecommunications service” the following definition—

“terrorism offence” has the meaning assigned to it by section 2 of the Terrorism Prevention Act.”.

2. In subsection (2) of section 2 by deleting the word “terrorism” and substituting therefor the words “any terrorism offence”.

The Mutual
Assistance
(Criminal Matters)
Act.

1. In section 2—

(a) in the definition of “prescribed offence”, by inserting the following as paragraph (c)—

“ (c) a terrorism offence as defined by section 2 of the Terrorism Prevention Act;”;

(b) by deleting the definition of “relevant treaty” and substituting therefor the following—

” “relevant treaty” means—

(a) a treaty, convention or other international agreement (whether made before or after the 14th day of July, 1995) that is in force and to which Jamaica is a party, the purpose of which is to provide for mutual legal assistance in criminal matters;

(b) any of the Conventions set out in the Second Schedule.”.

2. In section 15—

(a) in the marginal note;

(b) in subsection (4),

by inserting the word “First” immediately before the word “Schedule”.

Second
Schedule.

3. By renumbering the Schedule as the First Schedule and inserting the following as the Second Schedule—

“ SECOND SCHEDULE

1. The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973.

2. The International Convention Against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979.

3. The International Convention for the Suppression of Terrorist Financing, adopted by the General Assembly of the United Nations on December 9, 1999.

4. The Convention on the Physical Protection of Nuclear Material, adopted at Vienna on October 26, 1979.

5. The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on March 10, 1988.

6. The International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997.

7. The Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on December 16, 1970.

8. The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971, and the Protocol to that Convention, done at Montreal on February 24, 1988.”

The
Offences
Against the
Person Act.

In section 2 (1) (f) by deleting the words "an act
of terrorism, that is to say,".

Passed in the Senate this 8th day of April, 2005.

SYRINGA MARSHALL-BURNETT, C.D.
President.

Passed in The House of Representatives this 12th day of April, 2005.

MICHAEL PEART
Speaker.

*This printed impression has been carefully
compared by me with the authenticated
impression of the foregoing Act, and has been
found by me to be a true and correct printed
copy of the said Act.*

Clerk to the Houses of Parliament.