

## **ANTI-TERRORISM ACT**

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**AN ACT**

**to prohibit the carrying out of any act of terrorism; provide for measures for the detection and prevention of terrorist activities; and for matters connected with or incidental to the foregoing.**

*[12th September, 2007]*

Act 21 of 2007.

**PART I  
PRELIMINARY**

1. Short title

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

2. Interpretation

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

**“Anti-Corruption Commission”** has the meaning assigned to it in the Anti-Corruption Commission Act;

**“Authorised officer”** means—

- (a) a police officer;
- (b) a customs officer;
- (c) an immigration officer;
- (d) an army officer;
- (e) an intelligence officer;
- (f) an officer from the Drug Enforcement Commission;
- (g) an officer from the Anti-Corruption Commission; or
- (h) any person appointed as such in writing by the Minister; and

**“bank”** has the meaning assigned to it in the Banking and Financial Services Act;

**“customs officer”** means an officer carrying out any functions under the Customs and Excise Act;

**“Counter-Terrorism Convention”** means any Convention listed in the Fifth Schedule to this Act

**“declared terrorist organisation”** has the meaning assigned to it in section 16;

**“Drug Enforcement Commission”** has the meaning assigned to it in the Narcotic Drugs and Psychotropic Substances Act;

**“explosive”** has the meaning assigned to it under the Explosives Act;

**“financial institution”** has the meaning assigned to it in the Banking and Financial Services Act;

**“financial service provider”** has the meaning assigned to it in the Banking and Financial Services Act;

**“firearm”** has the meaning assigned to it under the Firearms Act and includes an air gun or air pistol;

**“immigration officer”** means an officer having functions under the immigration and Deportation Act;

**“inland waters”** means such waters as may be declared to be inland waters by the President under the Inland Waters Shipping Act;

**“legal practitioner”** has the meaning assigned to it in the Legal Practitioners Act;

**“organisation”** includes any association or combination of persons;

**“police officer”** has the meaning assigned to it in the Zambia Police Act;

**“premises”** includes a vehicle, an offshore installation, a tent or moveable structure;

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

**“record”** includes—

- (a) a photographic record;

(b) an electronic or magnetic record; and

(c) any computer, disk, tape, apparatus or thing in or on which a record is stored; and

**“terrorism and terrorist act”** means an act or omission in or outside Zambia and is intended, or by its nature and context, may reasonably be regarded as being intended to intimidate or threaten the public or a section of the public or compel a government or an international organisation to do, or refrain from doing, any act, and is made for the purpose of advancing a political, ideological or religious cause and which—

(a) constitutes an offence within the scope of a counter terrorism convention listed in the Fifth Schedule;

(b) causes or is intended to cause death or serious bodily harm to a person;

(c) causes or is intended to cause serious damage to private or public property;

(d) endangers a person’s life;

(e) creates a serious risk to the health or safety of the public or a section of the public

(f) involves the use of firearms or explosives;

(g) involves the release into the environment or any part thereof or distributing or exposing the public or any part thereof to any dangerous, hazardous, radioactive, harmful substance, toxic chemical, microbial or other biological agent or toxin;

(h) is designed or intended to disrupt any computer system or the provision of services directly related to communications, infrastructure, banking or financial services, utilities, transportation or other essential infrastructure or services;

(i) is designed or intended to disrupt the provision of essential emergency services such as police, civil defence or medical services;

(j) causes serious risk to national security;

(k) causes damage to a vessel or is likely to endanger the safe navigation of any vessel on inland or international waters; and

(l) causes damage to any aircraft or airport, is intended to or is likely to cause damage to any air navigation facilities or endanger the safety and lives of persons and property, affect the operations of air services or undermine the confidence of the public in the safety of civil aviation; and

**“vessel”** includes a ship, fishing vessel and any water craft used or capable of being used as a means of transportation on water.

(2) In this Act, a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a declared terrorist organisation.

(3) Any protest, demonstration or stoppage of work shall not be considered as a terrorist act if the act is not intended to result in any serious bodily harm to a person, damage to property, endanger a person’s life or create a risk to human health or public safety; and

(4) A requirement imposed by or under this Act to produce or deliver up a record shall, in relation to an electronic or magnetic record, be construed as a requirement—

(a) where practicable, to produce or deliver up a disk from which the record is fully and freely accessible, by the use of a personal computer of a common variety, by the officer or person to whom the record is required to be produced or delivered up; or

(b) where it is not reasonably practicable—

(i) to allow an officer or person full and free access to the record using facilities of, or in the custody or under the control of, the person on whom the requirement is imposed; or

(ii) to produce or deliver up a documentary or a hard copy version of the record.

(5) A power conferred by or under this Act to inspect any record shall, in relation to an electronic or magnetic record, be construed as a power to require full and free access to the record using the facilities of the person having custody or control of the record, and any neglect or failure by that person to afford such access shall be deemed to constitute obstruction of the officer or person exercising the power.

(6) A power conferred by or under this Act to seize and retain a record includes, in relation to an electronic or magnetic record, a power to seize any computer, disk, tape or other thing on which the record is stored.

### 3. Jurisdiction of High Court

(1) Subject to the other provisions of this Act, the High Court has jurisdiction to try any offences under this Act.

(2) Any person who commits an offence outside Zambia is deemed to have committed that offence in Zambia if—

(a) that person is a Zambian citizen;

(b) that person is not a Zambian citizen but is ordinarily resident in Zambia;

(c) that person, after the commission of the offence, is present in Zambia; or

(d) that person has committed the offence against a Zambian citizen or against a person who is ordinarily resident in Zambia.

### 4. Non-application of section 26(2) of Penal Code

Sub-section (2) of section 26 of the Penal Code does not apply to this Act.

## **PART II TERRORIST OFFENCES**

### 5. Prohibition of terrorism

(1) A person shall not commit any terrorist act.

(2) Any person who contravenes sub-section (1) commits an offence and is liable, upon conviction, to imprisonment for a minimum of twenty years and a maximum of life imprisonment.

## 6. Weapons and terrorism training

(1) A person who for purposes of or in connection with terrorism provides instruction or training in terrorism or the making or use of—

(a) firearms or explosives; or

(b) chemical, biological, radiological or nuclear weapons; commits an offence and is liable, upon conviction, to imprisonment for life.

(2) A person who for purposes of, or in connection with, terrorism receives instructions or training in terrorism or in the making or use of—

(a) firearms or explosives, or

(b) chemical, biological, radiological or nuclear weapons; commits an offence and is liable, upon conviction, to imprisonment for life.

(3) A person who invites another to receive instruction or training, or recruits any person for instruction, training or membership to a terrorist group the receipt or membership whereof—

(a) would constitute an offence under sub-section (2); or

(b) would constitute an offence under sub-section (2) but for the fact that it is to take place outside Zambia; commits an offence and is liable, upon conviction, to imprisonment for life.

(4) For the purposes of this section—

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

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

(5) Nothing in this section shall be construed as prohibiting-

(a) the provision of any instruction or training to, or the receipt of any instruction or training by, members of the armed or defence forces or the Zambia Police Force;

(b) the provision or receipt of any instruction or training under or for the purposes of any Act or written law; or

(c) an invitation to receive any instruction or training referred to in paragraph (a) or (b).

## 7. Directing terrorist organization

A person who directs the activities of an organisation which is concerned in the commission of acts of terrorism commits an offence and is liable, upon conviction, to imprisonment for life.

## 8. Possession of article for terrorist purposes

A person who possesses an article for a purpose connected with the commission, preparation or instigation of an act of terrorism commits an offence and is liable, upon conviction, to imprisonment for life.

## 9. Collection of information for terrorist purposes

(1) A person who for purposes of or in connection with terrorism—

(a) collects, makes or transmits a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism; or

(b) possesses a document or record containing information likely to be used for a terrorist act; commits an offence and is liable, upon conviction, to imprisonment for a period of not less than ten years but not exceeding twenty years.

(2) In this section "transmit" includes—

(a) sending by telephone, e-mail, voice-mail or other telecommunication method; and

(b) making available on the internet.

## 10. Incitement of offences

(1) A person who incites another person to commit an act of terrorism commits an offence and is liable, upon conviction, to imprisonment for life.

(2) For the purposes of sub-section (1), it is immaterial whether or not the person incited is in Zambia at the time of the incitement.

## 11. Aiding, abetting, conspiracy, etc of terrorist act

A person who aids, abets, counsels, procures, incites or solicits the commission of a terrorist act, commits an offence and is liable upon conviction, to imprisonment for life.

## 12. Hoaxes

A person who knowingly makes a false report or issues any false communication purporting that a terrorist offence has been or is intended to or is likely to be committed commits an offence and is liable, upon conviction, to imprisonment for a term of not less than twenty years, but not exceeding thirty years.

## 13. Harboursing, concealing, etc of terrorist



A person, who harbours, conceals or provides a safe haven to a terrorist or another person who finances or supports a terrorist or the commission of a terrorist act commits an offence and is liable, upon conviction, to imprisonment for life.

#### 14. Attempts to commit act of terrorism

A person who conspires in or attempts to commit an act of terrorism commits an offence and is liable, upon conviction, to imprisonment for life.

#### 15. Causing damage to public place, facility, etc

(1) A person who unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a Government facility, a public transportation system or an infrastructure facility with—

(a) intention to cause death or serious bodily harm; or

(b) intention to cause extensive destruction to the place, facility or system, where destruction results in or is likely to result in major economic loss; commits an offence and is liable, upon conviction, to imprisonment for life.

(2) A person commits an offence under this section if that person—

(a) participates as an accomplice in an offence under sub-section (1);

(b) organises or directs others to commit an offence under sub-section (1); or

(c) in any way contributes to the commission of one or more offences under this section through a group of persons acting with a common purpose; and is liable, upon conviction, to imprisonment for life.

(3) In this section —

**“energy”** has the meaning assigned to it in the Energy Regulation Act;

**“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 harm or substantial material damage; or

(b) a weapon or device that is designated, or has the capability, to cause death, serious bodily harm 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;

**“fuel”** has the meaning assigned to it in the Energy Regulation Act; Cap 436

**“Government facility”** includes any permanent or temporary facility or conveyance that is used or occupied by representatives of the State, members of Government, the Legislature, the Judiciary, any officer or employees of the State or any other public authority or entity, or officers or employees of an intergovernmental organisation in connection with their official duties;

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

“**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.

### **PART III DECLARED TERRORIST ORGANISATION**

#### 16. Declared terrorist organizations

(1) For the purposes of this Act, an organisation is a declared terrorist organisation if—

- (a) the Minister has, by notice, under this section, declared the organisation to be engaged in terrorism;
- (b) the organisation operates under the same name as an organisation referred to in paragraph (a); or
- (c) the organisation has been declared by the Security Council of the United Nations Organisation or the African Union is a terrorist organisation.

(2) Paragraph (b) of sub-section (1) has effect subject to the terms of any notice published under this section.

(3) The Minister may, where the Minister has reasonable grounds to believe that an organisation is engaged in terrorism, by notice published in the *Gazette* declare that the specified organisation is engaged in terrorism.

(4) For purposes of sub-section (3), an organisation is engaged in terrorism if it—

- (a) commits or participates in acts of terrorism;
- (b) prepares for terrorism;
- (c) promotes or encourages terrorism; or
- (d) is otherwise involved in terrorism

#### 17. Membership

(1) A person who forms, owns, belongs or professes to belong to an organisation that is a declared terrorist organisation commits an offence and is liable, upon conviction, to imprisonment for life.

(2) It is a defence for a person charged with an offence under sub-section (1) to satisfy the court, on a balance of probabilities—

(a) that the organisation was not a declared terrorist organisation under this Act on the last or only occasions on which the person became a member or began to profess to be a member; and

(b) that the person has not taken part in the activities of the organisation at any time while it was declared a terrorist organisation under this Act.

## 18. Support and meetings

(1) A person who invites support for a declared terrorist organisation commits an offence.

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

(a) support a declared terrorist organisation;

(b) further the activities of a declared terrorist organisation; or

(c) be addressed by a person who belongs or professes to belong to a declared terrorist organisation.

(3) A person who addresses a meeting commits an offence if the purpose of that person's address is to encourage support for a declared terrorist organisation or to further its activities.

(4) It is a defence for a person charged with an offence under paragraph (c) of sub-section (2) to satisfy the court, on a balance of probabilities, that the person had no reasonable cause to believe that the address mentioned in that paragraph would support a declared terrorist organisation or further its activities.

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(5) A person convicted of an offence under this section is liable to imprisonment for life.

## PART IV TERRORIST PROPERTY

### 19. Meaning of "terrorist property"

(1) In this part, "**terrorist property**" means—

(a) money or other property which has been, is being or is intended to be used for the purposes of terrorism;

(b) money or other property owned or controlled by or on behalf of a terrorist organisation;

(c) proceeds of the commission of acts of terrorism; and

(d) proceeds of acts carried out for the purposes of terrorism.

(2) In this section—

(a) a reference to proceeds of an act includes a reference to any property which wholly or partly, and whether directly or indirectly, represents the proceeds of the act, including payments or other rewards in connection with its commission; and

(b) a reference to an organisation's resources includes a reference to any money or other property which is applied or made available, or is to be applied or made available, for use by the organisation.

## 20. Fundraising and other support

(1) A person who—

- (a) invites another to provide or make available money or other property; and
- (b) intends that any money or other property should be used for the purposes of terrorism;

commits an offence and is liable, upon conviction, to imprisonment for life.

(2) A person who—

- (a) provides or makes available money or other property; and
- (b) knows that the money or other property shall or may be used for the purposes of terrorism;

commits an offence and is liable, upon conviction, to imprisonment for life.

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

## 21. Use and possession of terrorist property

(1) A person who knowingly uses, or who causes or permits any other person to use, money or other property for the purposes of terrorism commits an offence and is liable, upon conviction, to imprisonment for life.

(2) A person who—

- (a) possesses money or other property; and
- (b) intends that it should be used for the purposes of terrorism; commits an offence and is liable, upon conviction, to imprisonment for life.

## 22. Assisting in retention or control of terrorist funds

(1) A person who enters into or becomes involved in an arrangement whereby the retention or control by or on behalf of another person of terrorist funds is facilitated, whether—

- (a) by concealment;
- (b) by removal from the jurisdiction;
- (c) by transfer to nominees; or
- (d) in any other way; commits an offence and is liable, upon conviction, to imprisonment for life.

(2) It is a defence for a person charged with an offence under this section to satisfy the court that the person did not know and had no reasonable cause to suspect that the arrangement related to terrorist funds.

(3) In this section, "**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 in furtherance of or in connection with such acts; or
- (c) the resources of a declared terrorist organisation.

### 23. Support services for terrorism

A person who provides or makes available, or offers to provide or make available—

- (a) a financial service or any service for the safe keeping any property;
- (b) any forged or falsified document;
- (c) access to any premises, vehicle, vessel, aircraft or place;
- (d) access to any communications equipment or capability; or
- (e) any services, skill or expertise of any kind; intending that the same should be used, or having reasonable cause to suspect that it will be used, for the purposes of terrorism, commits an offence and is liable, upon conviction, to imprisonment for life.

### 24. Cooperation with police

(1) Subject to sub-section (2), a person does not commit an offence under any of the provisions of this Part by involvement in transaction or arrangement relating to money or other property if as soon as practicable after becoming involved in the transaction or arrangement, and on that person's own initiative, the person discloses to an authorised officer—

- (a) the person's suspicion or belief that the money or other property is terrorist property; and
- (b) the information on which that person's suspicion or belief is based.

(2) Sub-section (1) does not apply to a person if—

- (a) an authorised officer forbids the person to continue the person's involvement in the transaction or arrangement to which the disclosure relates; and
- (b) the person continues that person's involvement.

(3) It is a defence for a person charged with an offence under sections 20 to 26 to satisfy the court on a balance of probabilities that—

- (a) the person intended to make a disclosure of the kind referred to under sub-section (1); and
- (b) there is a reasonable excuse for the person's failure to make a disclosure.

(4) Where a person is in employment and the person's employer has established a procedure for the making of disclosures that may be made to an authorised officer under sub-section (1), this section shall have effect in relation to that person as if a reference in this section to disclosure to a police officer included a reference to disclosure in accordance with the procedure.

(5) A person shall not be subject to any liability for making a disclosure in accordance with this Act and no action, claim or demand shall be taken, made against or of, the person for making the disclosure.

(6) This section has effect despite any duty of secrecy or confidentiality or any other restriction on disclosure, whether or not imposed by any written law, applicable to a person.

(7) Any person who makes a disclosure in accordance with this Act—

(a) has a defence of absolute privilege in respect of the publication to the authorised officer of the disclosure in proceedings for defamation;

(b) on whom a provision of any written law other than this Act, imposes a duty to maintain confidentiality with respect to any information disclosed is taken not to have committed an offence against that written law;

(c) who is subject to an obligation by way of oath, rule of law or practice to maintain confidentiality with respect to the disclosure, is taken not to have breached the oath, rule of law or practice or a law relevant to the oath, rule or practice; and

(d) is not liable to disciplinary action because of the disclosure.

## 25. Property-tracking

(1) Where the Attorney-General has reasonable grounds to suspect that a person has committed, is committing or is about to commit an act of terrorism or is in possession of terrorist property, the Attorney-General may, for the purposes of investigating an offence under this Act, apply to the High Court for an order —

(a) compelling the person to deliver up any document or record relevant to identifying, locating or quantifying any property belonging to that person or in that person's possession or control;

(b) requiring a bank or any other financial institution, trustee or custodian to produce all information and deliver up all documents and records regarding any business transaction conducted by or on behalf of the person.

(2) An order made under this section may authorise an authorised officer to enter any premises, including a bank or other financial institution, and search the premises and remove any documents or records for the purposes of executing the order.

(3) Any person who delays, interferes with or wilfully obstructs an authorised officer in the exercise of powers under this section, commits an offence and is liable, upon conviction, to imprisonment for a period of twenty years.

## 26. Attachment of property

(1) The Attorney-General may make an *ex parte* application to the High Court for a provisional order temporarily suspending dealings relating to any money or other property due or owing or belonging to, or held on behalf of—

(a) a person in this section referred to as a "suspect" charged or about to be charged with an offence under this Act or with an offence which constitutes an act of terrorism; or

(b) any other specified person.

(2) The Attorney-General may make an *ex parte* application to the High Court for a provisional order temporarily suspending dealings relating to any money or other property due or owing or belonging to, or held on behalf of—

(a) a declared terrorist organisation;

(b) a specified person in this section referred to as a "suspect" reasonably suspected of being a member of such an organisation; or

(c) any other specified person.

(3) An order made under this section may—

(a) prohibit any person from making money or other property available to or for the benefit of the organisation or suspect;

(b) provide for the granting or authority to make money or other property available to any person and on such conditions as may be specified in the order;

(c) require a person to provide such information or produce such documents or records as may be reasonably required for the investigation of an offence under this Act; or

(d) include such other condition as the court may impose.

(4) The court may appoint a suitable person to manage the assets of an organisation or suspect during the period of operation of an order made under this section.

(5) The Attorney-General shall—

(a) cause notice of an order made under this section to be published in the next issue of the *Gazette* and in two daily newspapers of general circulation in the area;

(b) give notice of the order to—

(i) any bank, financial institution or other business person; and

(ii) any other person who the Attorney-General knows or suspects may hold or be vested with property belonging to or held on behalf of the organisation or suspect.

(6) An order under this section shall lapse upon the expiry of thirty days from the date of the order unless the High Court, after hearing the parties, otherwise directs.

(7) A person who is aggrieved by the exercise by the Attorney-General of any powers under this section may bring an action in the High Court against the Attorney-General for damages or any other legal remedy.

## 27. Seizure and detention of terrorist money

(1) An authorised officer who has reasonable grounds to suspect that any money which is being imported into or exported from Zambia, or is being brought to any place in Zambia for the purpose of being exported from Zambia, is terrorist property, may seize the money.

(2) An authorised officer may seize money under this section if the officer reasonably suspects only part of the money to be terrorist property, where it is not reasonably practicable to seize that part only of the money.

(3) An authorised officer may exercise powers under sub-section (1), whether or not any proceedings have been brought for an offence in connection with any terrorist money.

(4) An authorised officer shall, as soon as is reasonably practicable and in any event not later than seven days after the seizure of any money under this section, make an application to the High Court for a detention order with respect to that money.

(5) The court shall not make an order for detention of any money unless it is satisfied that there are reasonable grounds for suspecting that the money is terrorist property.

(6) Subject to sub-section (8), any order made under this section shall remain valid for a period of sixty days, and, unless the money is to be produced before the court in proceedings against any person for an offence with which the money is connected, may be renewed for further periods of not more than thirty days at a time, by the High Court, on further application.

(7) Any money detained under this section shall be deposited by an authorised officer in an interest-bearing account with a bank and shall be released by order of the High Court to a person appearing to the court to be lawfully entitled to it—

(a) where the conditions under sub-section (5) are no longer met; or

(b) if no proceedings have been brought in connection with the money within six months of the seizure of the money.

(8) In this section, "**authorised officer**" means—

(a) *the* Commissioner of Customs and Excise holding office as such under the Customs and Excise Act;

(b) the Director-General of the Anti-Corruption Commission;

(c) the Commissioner of the Drug Enforcement Commission;

(d) the Inspector General of Police holding office as such under the Zambia Police Act;

(e) the Attorney-General; or

(f) a person to whom an authorised officer has delegated the functions of office for the purposes of this section.

(9) For the purpose of this section, "**money**" means—

(a) coins and notes in any currency;



- (b) postal orders;
- (c) travellers' cheques;
- (d) bankers' drafts;
- (e) such other kinds of negotiable or monetary instrument as may be prescribed by rules made under this Act; and
- (f) a deposit in a bank or other financial institution traceable to money in any of the forms mentioned in paragraphs (a) to (e).

## 28. Forfeiture of terrorist property

(1) The court before which a person is convicted of an offence under this Act or an offence under any other Act that constitutes an act of terrorism within the meaning of this Act, may make a forfeiture order in accordance with the provisions of this section.

(2) Where a person is convicted of an offence under section 5 or 6, of this Act the court may order the forfeiture of anything which the court considers was in the person's possession for purposes connected with the offence.

(3) Where a person is convicted of an offence under sub-section (1) or (2) of section 20 or under section 21 the court may order the forfeiture of any money or other property—

- (a) which, at the time of the offence, the person had in possession or under that person's control; and
- (b) which, at that time, the person intended should be used for the purposes of terrorism.

(4) Where a person is convicted of an offence under sub-section (2) of section 20, the court may order the forfeiture of any money or other property—

- (a) which, at the time of the offence, the person had in that person's possession or under that person's control; and
- (b) which, at that time, the person knew would or might be used for the purposes of terrorism.

(5) Where a person is convicted of an offence under section 22, the court may order the forfeiture of the money or other property—

(a) to which the arrangement in question related; and (b) which, at the time of the offence, the person knew was terrorist property or would or might be used for the purposes of terrorism.

(6) Where a person is convicted of an offence under sections 20 to 23, the court may order the forfeiture of any money or other property which wholly or partly, and whether directly or indirectly, is received by any person as a payment or other reward in connection with the commission of the offence.

(7) Before making an order under this section, a court shall afford any person—

- (a) who is not a party to the proceedings; and

(b) who claims to be the owner of or otherwise interested in any of the property which may be forfeited under this section; an opportunity to be heard.

(8) The First Schedule shall have effect in respect of forfeiture orders under this section.

## PART V TERRORIST INVESTIGATIONS

### 29. Meaning of terrorist "and A terrorist investigation"

(1) In this Part—

**“terrorist”** means a person who—

- (a) has committed an offence under this Act; or
- (b) is or has been involved in the commission, preparation or instigation of acts of terrorism; and

**“terrorist investigation”** means an investigation of—

- (a) the commission, preparation or instigation of acts of terrorism;
- (b) an act which appears to have been done for the purposes of terrorism;
- (c) the resources of a declared terrorist organisation;
- (d) the possibility of making an order under sub-section (3) of section 16; or
- (e) the commission, preparation or instigation of an offence under this Act.

### 30. Powers of arrest

Any authorised officer may arrest without warrant any person who has committed or is committing or whom the authorised officer has reasonable grounds for suspecting to have committed or to be committing an offence under this Act.

### 31. Detention orders

(1) Subject to sub-section (2), an authorised officer may, for the purpose of preventing the commission of an offence under this Act or preventing interference in the investigation of an offence under this Act, apply *ex parte*, to a judge of the High Court for a detention order.

(2) An authorised officer shall before making an application under sub-section (1), obtain the prior written consent of the Attorney-General.

(3) A Judge to whom an application is made under sub-section (1) may make an order for the detention of the person named in the application if the judge is satisfied that the written consent of the Attorney-General has been obtained as required by section (2) and that there are reasonable grounds to believe or suspect that

(a) the person is preparing to commit an offence under this Act; or

(b) is interfering, or is likely to interfere with, an investigation into an offence under this Act.

(4) An order under sub-section (3) shall be for a period not exceeding fourteen days in the first instance and may, on application made by an authorised officer, be extended for a further period, provided that the maximum period of detention under the order does not exceed thirty days.

(5) An order under sub-section (3) shall specify the place at which the person named in the order is to be detained and the conditions subject to which the person is to be detained including conditions relating to access to a government medical officer and the video recording of the person in detention so as to constitute an accurate continuous and uninterrupted record of the person's detention for the whole period of that person's detention.

### 32. Powers of investigation

(1) Subject to this Part, the special powers conferred by this Act purposes of a terrorist investigation are available by means of a warrant issued by a judge of the High Court on application by an authorised officer.

(2) A judge may issue a warrant authorising a police officer of or above the rank of inspector—

(a) to enter any premises specified in the warrant;

(b) to search any premises, any person and inspect any document, record or thing, found in the premises; and

(c) to seize and retain any relevant material, including any relevant document, record or thing found in the premises.

(3) A judge shall not issue a warrant under sub-section (2) unless the judge is satisfied that—

(a) the warrant is sought for the purpose of a terrorist investigation; and

(b) there are reasonable grounds for believing that there is material on the premises which may be relevant to the terrorist investigation.

### 33. Powers of investigation in cases of urgency

(1) Where, in a case of urgency, communication with a judge to obtain a warrant would cause delay that may be prejudicial to the maintenance of public safety or public order, an authorised officer may, notwithstanding any other Act, with the assistance of such other authorised officers as may be necessary—

(a) enter and search any premises or place, if the police officer has reason to suspect that, within those premises or at that place—

(i) an offence under this Act is being committed or is likely to be committed; or

(ii) there is evidence of the commission of an offence under this Act;

(b) search any person or vehicle found on any premises or place which the police officer is empowered to enter and search under paragraph (a);

(c) stop, board and search any vessel, aircraft or vehicle if the police officer has reason to suspect that there is in it evidence of the commission or likelihood of the commission of an offence under this Act;

(d) seize, remove and detain anything which is, or contains or appears to the police officer to be or to contain or to be likely to be or to contain, evidence of the commission of an offence under this Act;

(2) An authorised officer who has exercised any power under this section shall bring the matter before a judge of the High Court within forty-eight hours of doing so and the judge shall make such orders as the judge thinks fit in respect of the matter.

(3) Where a seizure is effected under this section, a list of all the articles seized shall be prepared and signed by the authorised officer who effected the seizure and shall forthwith be delivered—

(a) to the person on whom the search is made; or

(b) to the owner of the premises, place, vessel, aircraft or vehicle searched.

#### 34. Power to intercept communication and admissibility of intercepted communications

(1) Subject to sub-section (2), an authorised officer may, for the purpose of obtaining evidence of the commission of an offence under this Act, apply, *ex parte*, to a Judge of the High Court, for an interception of communications order.

(2) An authorised officer shall, before making an application under sub-section (1), obtain the prior written consent of the Attorney-General.

(3) A judge to whom an application is made under sub-section (1) may make an order—

(a) requiring a communications service provider to intercept and retain a specified communication or communications of a specified description received or transmitted, or about to be received or transmitted by that communications service provider; or

(b) authorising the authorised officer to enter any premises and to install on such premises, any device for the interception and retention of a specified communication or communications of a specified description and to remove and retain such device; if the judge is satisfied that the written consent of the Attorney-General has been obtained as required by sub-section (2) and that there are reasonable grounds to believe that material information relating to—

(i) the commission of an offence under this Act; or

(ii) the whereabouts of the person suspected by the authorised officer to have committed the offence;

is contained in that communication or communications of that description.

(4) Any information contained in a communication—

(a) intercepted and retained pursuant to an order under sub-section (3);

(b) intercepted and retained in a foreign State in accordance with the law of that foreign State and certified by a Judge of that foreign state to have been so intercepted and retained;

shall be admissible in proceedings for an offence under this Act, as evidence of the truth of its contents notwithstanding the fact that it contains hearsay.

### 35. Power to gather information

(1) Subject to sub-section (2), an authorised officer may, for the purpose of an investigation of an offence under this Act, apply *ex parte* to a Judge of the High Court for an order for the gathering of information.

(2) An authorised officer shall before making an application under sub-section (1) obtain the prior written consent of the Attorney- General.

(3) A judge to whom an application is made under sub-section (1) may make an order for the gathering of information if the judge is satisfied that the written consent of the Attorney-General has been obtained as required by sub-section (2) and—

(a) that there are reasonable grounds to believe that—

(i) an offence under this Act has been committed; and

(ii) information concerning the offence, or information that may reveal the whereabouts of a person suspected by the authorised officer of having committed the offence, is likely to be obtained as a result of the order; or

(b) that—

(i) there are reasonable grounds to believe that an offence under this Act will be committed;

(ii) there are reasonable grounds to believe that a person has direct and material information that relates to an offence referred to in sub-paragraph (i), or that may reveal the whereabouts of a person who the authorised officer suspects may commit the offence referred to in this paragraph; and

(iii) reasonable attempts have been made to obtain the information referred to in sub-paragraph (ii) from the person referred to in that sub-paragraph.

(4) An order made under sub-section (3) may—

(a) order the examination, on oath or not, of a person named in the order;

(b) order the person to attend at the place fixed by the judge, or by the judge designated under paragraph (d), as the case may be, for the examination and to remain in attendance until excused by the presiding judge;

(c) order the person to bring to the examination any document or thing in that person's possession or control, and produce it to the presiding judge;

(d) designate another judge as the judge before whom the examination is to take place; and

(e) include any other terms or conditions that the judge considers desirable, including terms or conditions for the protection of the interests of the person named in the order and of third parties or for the protection of any ongoing investigation.

(5) An order made under sub-section (3) may be executed anywhere in Zambia.

(6) The judge who made the order under sub-section (3), or another judge of the same court, may vary its terms and conditions.

(7) A person named in an order made under sub-section (3) shall answer questions put to the person by the Attorney-General or the Attorney-General's representative, and shall produce to the presiding judge documents or things that the person was ordered to bring, but may refuse to do so if answering a question or producing a document or thing would disclose information that is protected by the law relating to non-disclosure of information or privilege.

(8) The presiding judge shall rule on an objection or other issue relating to a refusal to answer a question or to produce a document or thing.

(9) A person shall not be excused from answering a question or producing a document or thing under sub-section (7) on the ground that the answer or document or thing may tend to incriminate the person or subject to any proceedings or penalty, but —

(a) no answer given or document or thing produced under sub-section (7) shall be used or received against the person in any criminal proceedings against that person, other than in a prosecution for perjury or giving false evidence; and

(b) no evidence derived from the evidence obtained from the person shall be used or received against the person in any criminal proceedings against that person, other than in a prosecution for perjury or giving false evidence.

(10) A person has the right to retain and instruct a legal practitioner at any stage of the proceedings under this section. (11) The presiding judge, if satisfied that any document or thing produced during the course of the examination is likely to be relevant to the investigation of any offence under this Act, shall order that the document or thing shall be given into the custody of the police officer or someone acting in the police officer's behalf.

### 36. Power to obtain financial information

The Second Schedule shall have effect with respect to obtaining financial information for the purposes of a terrorist investigation.

### 37. Port and border controls

(1) The Third Schedule shall have effect to confer powers to examine persons arriving in or leaving Zambia and for related purposes.

(2) The powers conferred by the Third Schedule shall be exercised notwithstanding any right conferred by the Immigration and Deportation Act.

### 38. Disclosure of information, etc

(1) A person who, knowing or having reasonable cause to suspect that an authorised officer is conducting a terrorist investigation—

(a) discloses to another person anything which is likely to prejudice the investigation; or

(b) interferes with material which is likely to be relevant to the investigation; commits an offence and is liable, upon conviction, to imprisonment for a period of twenty years.

(2) A person who, knowing or having reasonable cause to suspect that a disclosure has been or will be made under section 24 —

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

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

commits an offence and is liable, upon conviction, to imprisonment for a period of twenty years.

(3) It is a defence for a person charged with an offence under this section to satisfy the court—

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

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

(4) Nothing in this section applies to a disclosure which is made by a legal practitioner—

(a) to the legal practitioner's client or to the client's representative in connection with the provision of legal advice by the legal practitioner to the client and not with a view to furthering a criminal purpose; or

(b) to any person for the purpose of actual or contemplated legal proceedings and not with a view to furthering a criminal purpose.

## **PART VI EXCLUSION ORDERS**

### 39. Making and effect of exclusion orders

(1) Where the Minister is satisfied that any person —

(a) is or has been involved in the commission, preparation or instigation of acts of terrorism in Zambia; or

(b) is attempting or may attempt to enter Zambia with a view to being involved in the commission, preparation or instigation of acts of terrorism; the Minister may make an exclusion order against the person prohibiting the person from being in, or entering, Zambia.

(2) In deciding whether to make an exclusion order under this section against a person who is ordinarily resident in Zambia, the Minister shall have regard to the question whether that person's connection with any country or territory outside Zambia is such as to make it appropriate that such an order should be made.

(3) An exclusion order shall not be made under this section against any person who is a citizen of Zambia.

(4) The Fourth Schedule shall have effect with respect to exclusion orders.

(5) This section has effect notwithstanding any provision of the Immigration and Deportation Act.

(6) A person who is the subject of an exclusion order may apply to the High Court for review of the order.

#### 40. Offences in connection with exclusion orders

(1) A person who is subject to an exclusion order and who fails to comply with the order at a time after the person has been, or has become liable to be, excluded under this Act commits an offence and is liable, upon conviction, to imprisonment for a period of not less than ten years but not exceeding twenty years.

(2) A person who—

(a) is knowingly involved in arrangements for securing or facilitating the entry into Zambia of a person whom that person knows, or has reasonable grounds for believing, to be the subject of an exclusion order; or

(b) harbours such a person in Zambia; commits an offence and is liable to imprisonment for a period of not less than ten years but not exceeding twenty years

### **PART VII MUTUAL ASSISTANCE AND EXTRADITION**

#### 41. Exchange of information

(1) The Attorney-General may, at the request of a competent authority of a foreign State, disclose to that authority any information in the Attorney-General's possession relating to any of the following:

(a) the actions or movements of persons suspected of involvement in acts of terrorism;

(b) the use of forged or falsified travel papers by persons involved in acts of terrorism;

(c) traffic in weapons and sensitive materials by persons suspected of involvement in acts of terrorism;

(d) the use of communications technologies by persons suspected of involvement in acts of terrorism;  
and

(e) the commission of offences by any person against this Act;

if the disclosure is not prohibited by any provision of law and will not be prejudicial to national security or to public safety.

#### 42. Other requests from foreign states



(1) Where a foreign State makes a request for assistance in the investigation or prosecution of an offence constituting an act of terrorism, or for the tracking, attachment or forfeiture of terrorist property located in Zambia, the Attorney-General may—

(a) execute the request; or

(b) decline to execute the request, or delay its execution, and inform the foreign State making the request of the reasons therefor.

(2) Where the Attorney-General decides to execute a request for assistance under sub-section (1), the Attorney-General may in the manner prescribed apply to the High Court for—

(a) an order in writing authorising an officer—

(i) to search the premises, search any person and inspect any document, record or thing, found therein; and

(ii) to seize and retain any relevant material, including any relevant document, record or thing, found therein.

(b) a property tracking order under section 25;

(c) an attachment order under section 26; or

(d) an order for forfeiture of property under section 28.

(3) The High Court may make an order under this section on such conditions as it may deem fit to impose, including any conditions as to payment of debts, sale, transfer or disposal of any property.

(4) For the purposes of sub-section (3), the provisions of this Act relating to the tracking, attachment and forfeiture of property shall apply, with the necessary modification, in respect of any act done or alleged to have been done outside Zambia—

(a) which constitutes an offence under this Act; or

(b) which would, if it had been done in Zambia, constitute such an offence.

(5) A power conferred by an order under this section to inspect any record shall, in relation to an electronic or magnetic record, be construed as a power to require full and free access to the record using the facilities of the occupier of the premises.

(6) A power conferred by an order under this section to seize

and retain a record includes, in relation to an electronic or magnetic record, a power to seize any disk, computer or other thing on which the record is stored:

Provided that, where a person having custody or control of a computer, magnetic tape or other thing on which a record is stored captures the record on a disk or other more portable object from which the officer executing the order is capable of obtaining ready access to the record, the power shall be exercised in relation to the more portable object.

43. (1) The Attorney-General may make a request to any foreign State—

(a) to provide evidence or information relevant to an offence under this Act; or

(b) for the tracking, attachment or forfeiture of terrorist property located in that State.

(2) Where the foreign State to which a request for assistance is made under sub-section (1) requires the request to be signed by an appropriate competent authority, the Attorney- General shall, for the purposes only of making such a request, be considered as the appropriate competent authority.

(3) The Attorney-General may, in respect of any proceedings for an offence under this Act, apply to the High Court for an order directed to any person resident in a foreign State to deliver oneself or any document, record, material or thing in that person's possession or under that person's control to the jurisdiction of the court or, subject to the approval of the foreign State, to the jurisdiction of a court of the foreign State for the purpose of giving evidence in relation to those proceedings.

(4) Evidence taken, pursuant to a request under this section, in any proceedings in a court of a foreign State may, if it is authenticated, be admitted in evidence in any proceedings to which it relates.

(5) For the purposes of sub-section (4), a document is authenticated if—

(a) it purports to be signed or certified by a judge, magistrate or officer in or of a foreign State; and

(b) it purports to be authenticated by the oath or affirmation of a witness or to be sealed with an official or public seal of a Minister, Department of State or Department, or officer in or of the Government of the foreign State.

#### 43. Requests to foreign states

(1) A request under section 42 or 43 shall be in writing and shall be dated and signed by or on behalf of the person making the request.

(2) A request may be transmitted in writing or by facsimile or by any other electronic device or means.

(3) A request shall—

(a) confirm either that an investigation or prosecution is being conducted in respect of a suspected offence related to terrorism or that a person has been convicted of an offence related to terrorism;

(b) state the grounds on which any person is being investigated or prosecuted for an offence related to terrorism or details of the conviction of the person;

(c) give sufficient particulars of the identity of the person;

(d) give particulars sufficient to identify any bank, financial institution or financial service provider or other person believed to have information, documents, record or materials which may be of assistance to the investigation or prosecution;

(e) request assistance to obtain from a bank, financial institution, financial service provider or other person any information, document, record or material which may be of assistance to the investigation or prosecution;

(f) specify the manner in which and the person to whom any information, document, record or material obtained pursuant to the request is to be produced;

(g) state whether an attachment order or forfeiture order is required and identify the property to be the subject of such an order; and

(h) contain such other information as may assist the execution of the request.

(4) A request shall not be invalidated for purposes of this Act or any legal proceedings by virtue of any failure to comply with sub-section (3) where the Attorney-General is satisfied that there is sufficient compliance to enable the execution of the request.

(5) Where the Attorney-General considers it appropriate, pursuant to an international agreement and in the public interest, the Attorney-General may order that the whole or any part of any property forfeited under section 28, or the value thereof, be returned or remitted to the requesting State.

#### 44. Form of request

(1) Where Zambia is a party to a counter-terrorism convention and there is in force an extradition agreement between the Government of Zambia and another State which is a party to that convention, the extradition agreement shall be deemed, for the purposes of the Extradition Act to include provision for extradition in respect of offences falling within the scope of that convention.

(2) Where Zambia is a party to a counter-terrorism convention and there is no extradition agreement in force between the Government of Zambia and another State which is a party to that convention, the Minister responsible for foreign affairs may, by order published in the *Gazette*, deem the counter-terrorism convention, for the purposes of the Extradition Act, to be an extradition agreement between the Government of Zambia and that State, providing for extradition in respect of offences falling within the scope of that convention.

(3) Where a citizen of Zambia has been arrested in another country under a law of that country relating to terrorism, the Attorney-General shall employ all due diligence to ascertain the circumstances of the case and, if necessary, take such action as the circumstances of the case may require.

### **PART VIII GENERAL**

#### 45. Counter terrorism convention as basis for extradition

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

(2) A power conferred by virtue of this Act to stop a person includes power to stop a vehicle.

(3) Any search of a person carried out pursuant to this Act shall be carried out by a person of the same sex as the person being searched.

#### 46. Powers to stop and search

(1) A document which purports to be—

(a) a notice or direction given or order made by the Minister or the Attorney-General for the purposes of a provision of this Act; and

(b) signed by the Attorney-General or on the Attorney General's behalf, shall be received in evidence and shall, until the contrary is proved, be deemed to have been given or made by the Minister or the Attorney-General, as the case may be.

(2) A document bearing a certificate which B

(a) purports to be signed by or on behalf of the Minister or the Attorney-General; and

(b) states that the document is a true copy of a notice or direction given or order made by the Minister or the Attorney-General for the purposes of a provision of this Act; shall be evidence of the document in legal proceedings

(3) Nothing in this section limits the operation of any provisions of the Evidence Act.

(4) Where in any proceedings for an offence under this Act, a question arises as to whether anything or substance is a weapon, a hazardous, radioactive or a harmful substance, a toxic chemical or microbial or other biological agent or toxin, a certificate purporting to be signed by an appropriate authority to the effect that the thing or substance described in the certificate is a weapon, hazardous, radioactive or a harmful substance, a toxic chemical or microbial or other biological agent or toxin, shall be admissible in evidence without proof of the signature or authority of the person appearing to have signed it and shall, in the absence of evidence to the contrary, be proof of the facts stated therein.

#### 47. Evidence

(1) There is hereby established the Compensation of Victims of Terrorism Fund, which shall be administered in accordance with rules to be made by the Minister.

(2) There shall be paid into the Fund B

(a) such fines as shall be imposed and paid pursuant to any convictions under this Act;

(b) grants, gifts, donations or bequests received by the Fund with the approval of the Minister; and

(c) such other moneys payable to the Fund by virtue of any law.

#### 48. Compensation of Victims of Terrorism Fund

(1) There is hereby established the Compensation of Victims of Terrorism Fund, which shall be administered in accordance with rules to be made by the Minister.

(2) There shall be paid into the Fund B

(a) such fines as shall be imposed and paid pursuant to any convictions under this Act;

(b) grants, gifts, donations or bequests received by the Fund with the approval of the Minister; and

(c) such other moneys payable to the Fund by virtue of any law.

#### 49. Rules of court

The Chief Justice may, by rules of court, make provision with respect to the procedure on applications to any court under this Act, and in particular as to—

- (a) the giving of notice to persons affected by an application under this Part; and
- (b) the joinder of those persons as parties to the proceedings.

#### 50. Regulations

(1) The Minister may, by statutory instrument, make regulations for or with respect to any matter which by this Act is required or permitted to be prescribed or which is necessary or expedient to be prescribed for carrying out or giving effect to the provisions of this Act.

(2) The Minister may, by statutory instrument, amend the Schedules to this Act.

### FIRST SCHEDULE

[Section 28 (8)]

#### FORFEITURE ORDERS

##### 1. Interpretation

In this Schedule—

**“forfeited property”** means the money or other property to which a forfeiture orders applies; and

**“receiver”** includes the Official Receiver acting as receiver or manager of property and a person who acts as a trustee, liquidator, receiver or manager under the applicable bankruptcy or insolvency law.

##### 2. Implementation of forfeiture orders

(1) Where a court makes a forfeiture order, it may make such other provision as appears to it to be necessary for giving effect to the order, and in particular may —

- (a) require any of the forfeited property to be paid or handed over to the Registrar of the court;
- (b) appoint a receiver to take possession, subject to such conditions and exceptions as may be specified by the court, of any of the forfeited property, to realize it in such manner as the court may direct and to pay the proceeds to the Registrar of the court;
- (c) direct a specified part of any forfeited money, or of the proceeds of the sale, disposal or realization of any forfeited property, to be paid by the Registrar of the court to the Treasury.

(3) In sub-paragraph (1) of paragraph 2, a reference to the proceeds of a sale, disposal or realization of property is a reference to the proceeds after deduction of the costs of sale, disposal or realization.

### 3. Remuneration of receiver

(1) A receiver appointed under paragraph 2 shall be paid the receiver's remuneration and expenses out of the proceeds of the realized property paid to the Register of a court under paragraph 2.

(2) Where proceeds are insufficient, the receiver shall be entitled to be paid the receiver's remuneration and expenses by the Treasury.

(3) A receiver shall not be liable to any person in respect of any loss or damage resulting from action—

(a) which the receiver takes in relation to property which is not forfeited property, but which the receiver reasonably believes to be forfeited property;

(b) which the receiver would be entitled to take if the property were forfeited property; and

(c) which the receiver reasonably believes that the receiver may take because of the belief that the property is forfeited property.

(4) Sub-paragraph (3) does not apply in so far as the loss or damage is caused by the receiver's negligence.

### 4. Certificate as to forfeiture

The registrar of a court that makes a forfeiture order shall issue a certificate in respect of a forfeiture order if an application is made by—

(a) the prosecutor in the proceedings in which the forfeiture order was made; or

(b) the defendant in those proceedings.

### 5. Protection of creditors

(1) Subject to sub-paragraph (2) of paragraph 2 of this Schedule, during the period of six months following the making of a forfeiture order, no money which is subject to the order, or which represents any property subject to it, shall be finally disposed of under this Schedule.

(2) Where any money or property is subject to a forfeiture order—

(a) the commencement of insolvency occurs, or has occurred, in the course of any proceedings;

(b) any function in relation to that property would, apart from the forfeiture order, be exercised by a receiver acting in those proceedings; and

(c) during the period of six months following the making of the forfeiture order, a receiver gives written notice to the registrar of the court executing the forfeiture order of the matter referred to in paragraphs (a) and (b);

sub-paragraph (3) shall apply in relation to the property in question.

(3) If property subject to a forfeiture order is sold, the proceeds of the sale—

(a) shall cease to be subject to the forfeiture order and any ancillary order; and

(b) shall be dealt with in the insolvency proceedings as if the forfeiture order had never been made.

(4) Where—

(a) sub-paragraph (3) would, but for this sub-paragraph, apply in relation to any property; and

(b) any person acting in pursuance of the forfeiture order or any ancillary order has entered into a contract for the sale of the property, or has incurred any other obligations in relation to it; that sub-paragraph shall not take effect in relation to the property, or the proceeds of its sale, unless the obligations have been discharged.

(5) Where, by virtue of sub-paragraph (3), any money or other property falls to be dealt with in insolvency proceedings, the Minister shall be taken to be a creditor in those proceedings to the amount or value of that property but, notwithstanding any provision contained in or made under any other enactment, the debt shall rank after the debts of all other creditors and shall not be paid until the other creditors have been paid in full.

(6) Where by virtue of sub-paragraph (3), any property ceases to be subject to a forfeiture order in consequence of the making of a bankruptcy order or an award of sequestration and subsequently the bankruptcy order is annulled or the award of sequestration is recalled or reduced, the property shall become subject to the forfeiture order and any ancillary order.

(7) Where any property referred to in sub-paragraph (6) is money, or has been converted into money—

(a) the court which ordered the annulment, or which recalled or reduced the award of sequestration, shall make an order specifying, for the purposes of paragraph (b) property comprised in the estate of the bankrupt or debtor to the amount or value of the property in question; and

(b) the property specified under paragraph (a) shall become subject to a forfeiture order and any applicable ancillary orders, in place of the property in question.

(8) In this paragraph "**the commencement of an insolvency**" means—

(a) the making of a bankruptcy order under the Bankruptcy Act; or

(b) in the case of a company—

(i) the passing of a resolution for its winding up; or

(ii) the making of an order by the court for the winding up of the company, where no such resolution has been passed, in accordance with the Companies Act; and

"**final disposal**" in relation to any money, means its payment to the Treasury in accordance with this Schedule, and "**finally dispose**" shall be construed accordingly.

## 6. Protection of insolvency

(1) Where—

(a) a receiver seizes or disposes of any property in relation to which the receiver's functions are not exercisable because it is for the time being subject to a forfeiture order; and

(b) at the time of seizure or disposal, the receiver believes and has reasonable grounds for believing that the receiver is entitled, whether in pursuance of a court order or otherwise, to seize or dispose of any property; the receiver shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by the receiver's negligence in so acting.

(2) A receiver shall have a lien on the property or the proceeds of its sale—

(a) for the expenses that the receiver incurred in connection with insolvency proceedings in relation to which the seizure or disposal purported to take place; and

(b) for so much of the receiver's remuneration as may reasonably be assigned for receiver's acting in connection with those proceedings.

## SECOND SCHEDULE

[Section 36]

### FINANCIAL INFORMATION

#### 1. Orders

(1) Where an order has been made under this Schedule in relation to a terrorist investigation, a police officer of or above the rank of inspector named in the order may require a bank, financial service provider or a financial institution to provide customer information for the purposes of the investigation.

(2) The information shall be provided in such manner and within such time as may be specified in the order.

(3) No customer information affecting money belonging to a client, held by a legal practitioner, shall be the subject of an *ex parte* order under this Schedule.

(4) A bank, financial service provider or a financial institution which fails to comply with a requirement under an order commits an offence and is liable to a penalty not exceeding five hundred thousand penalty units.

(5) It is a defence for an institution charged with an offence under sub-paragraph (3) to satisfy the court, on a balance of probabilities—

(a) that the information required was not in the institution's possession; or

(b) that it was not reasonably practicable for the institution to comply with the requirement.

#### 2. Procedure

(1) An order under this Schedule shall be made by the High Court on the application of a police officer above the rank of inspector or the Attorney-General.



(2) Rules of court may make provision with respect to the procedure for an application for an order under this Schedule.

### 3. Criteria for making order

An order under this Schedule shall be made if the court is satisfied that—

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

### 4. Meaning of "financial institution", etc

(1) In this Schedule, "bank", "financial institution", and "financial service provider" have the meanings assigned to them under the Banking and financial Services Act.

(2) An institution which ceases to be a bank, financial service provider or a financial institution for the purposes of this Schedule, whether by virtue of rules made under this Act or otherwise, shall continue to be treated as a bank, financial institution or financial service provider for the purposes of any requirement under paragraph 1 to provide customer information which relates to a time when the institution was a bank, financial institution or financial service provider as the case may be.

### 5. Customer information

(1) In this Schedule, "**customer information**" means —

(a) information as to whether a business relationship exists or existed between a bank, financial institution or financial service provider and a particular customer;

(b) a customer's account number;

(c) a customer's full name;

(d) a customer's date of birth;

(e) a customer's address or former address;

(f) the date on which a business relationship between a bank, financial institution or financial service provider and a customer begins or ends;

(g) any evidence of a customer's identity obtained by a bank, financial institution or financial service provider in pursuance of or for the purposes of the Prohibition and Prevention of the Money Laundering Act, 2001; and

(h) the identity of a person sharing an account with a customer.

(2) For the purposes of this Schedule, there is a business or customer relationship between a bank, financial institution or financial service provider and a person if—

(a) there is an arrangement between them designed to facilitate the carrying out of frequent or regular transactions between them; and

(b) the total amount of payments to be made in the course of the arrangement is neither known nor capable of being ascertained when the arrangement is made.

(3) Rules made under this Act may provide for a class information—

(a) to be customer information for the purpose of this Schedule; or

(b) to cease to be customer information for the purposes of this Schedule.

6. offence by, body corporate, etc

(1) Where an offence under sub-paragraph (4) of paragraph 1 is committed by an institution and it is proved that the offence—

(a) was committed with the consent or connivance of an officer of the institution, or

(b) was attributable to neglect on the part of an officer of the institution; the officer and the institution shall be guilty of the offence.

(2) Where a person is convicted of an offence under sub-paragraph (4) of paragraph 1 by virtue of this paragraph, the person is liable to imprisonment for a term not exceeding two years or to a fine not exceeding two hundred thousand penalty units, or to both.

(3) In the case of an institution which is a body corporate, in this paragraph "officer" includes B

(a) a director, manager or Secretary;

(b) a person purporting to act as a director, manager or Secretary; and

(c) if the affairs of the body are managed by its members, a member.

(4) In the case of an institution which is a partnership, in this paragraph A officer means a partner.

(5) In the case of an institution which is an unincorporated association other than a partnership, in this paragraph "**officer**" means a person concerned in the management or control of the association.

### THIRD SCHEDULE

[Section 37]

#### PORT AND BORDER CONTROLS

1. Interpretation

(1) In this Schedule—

**“examining officer”** means—

- (a) a police officer;
- (b) an officer from the Anti-Corruption Commission;
- (c) an officer from the Drug Enforcement Commission;
- (d) an immigration officer; and
- (e) a customs officer who is designated for the purpose of this Schedule by the Commissioner of Customs and Excise;

**“port”** means—

- (a) a port within the meaning of the Customs and Excise Act; or
- (b) such other point of entry into or exit from Zambia as the Minister may designate by notice published in the *Gazette*;

**“port manager”** means any person having custody, control or management of a port;

**“ship”** includes a vessel or hovercraft; and

**“vehicle”** includes a train.

## 2. information

An examining officer may question a person who has arrived in or who is seeking to leave Zambia by ship, vehicle or aircraft for the purpose of determining—

- (a) whether there is any reasonable cause to suspect that the person is a terrorist; or
- (b) whether the person is subject to an exclusion order.

## 3. Questioning

A person who is questioned under paragraph 2 shall—

- (a) give the examining officer any information in the person’s possession which the officer requests;
- (b) produce to the examining officer on request either a valid passport which includes a photograph or another document which establishes the person’s identity and citizenship;
- (c) declare whether the person has any documents of a kind specified by the examining officer; and
- (d) produce to the examining officer on request any document which the person has and which is of a kind specified by the examining officer.

## 4. Stopping of persons or vehicle

(1) For the purposes of exercising a power under paragraph 2, an examining officer may—

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

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

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

## 5. Searching of vessels and aircraft

An examining officer may search a ship, aircraft, or conveyance which the officer has reasonable grounds to believe is carrying or harbouring any terrorist or thing likely to be used for terrorist purposes.

## 6. Search of persons

An examining officer who questions a person under paragraph 2 may, for the purpose of determining whether the person is a terrorist—

- (a) search the person;
- (b) search anything which the person has or which belongs to the person and which is on a ship or aircraft;
- (c) search anything which the person has, or which belongs to the person and which the examining officer reasonably believes has been, or is about to be, on a ship or aircraft; and
- (d) search a ship or aircraft for anything falling within paragraph (b).

## 7. Examining of goods

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

(2) This paragraph applies to goods which have arrived in or are about to leave Zambia on a ship, aircraft or vehicle.

(3) In this paragraph, "goods" includes—

- (a) property of any description; and
- (b) containers.

(4) An examining officer may board a ship or aircraft or enter a vehicle for the purpose of exercising any of the officer's powers under this paragraph.

## 8. Detention of property

(1) This paragraph applies to anything which—

- (a) is given to an examining officer in accordance with paragraph 3;
- (b) is searched or found on a search under paragraph 5 or 6; or
- (c) is examined under paragraph 7.

(2) An examining officer may detain anything—

- (a) for the purpose of examination, for a period not exceeding three days beginning with the day on which the detention commences;
- (b) which may be required for use in any criminal proceedings; or
- (c) which may be required in connection with a decision by the Minister whether to make an exclusion order or not.

## 9. Designation of control areas

(1) The Minister may, by notice in writing, to an owner or agent of any ship or aircraft—

- (a) designate control areas in any port in Zambia; and
- (b) specify conditions for or restrictions on the embarkation or disembarkation of passengers in a control area.

(2) Where an owner or agent of a ship or aircraft receives a notice under sub-paragraph (1) in relation to a port, the owner or agent shall take all reasonable steps to ensure, in respect of the ship or aircraft—

- (a) that passengers do not embark or disembark at the port outside a control area; and
- (b) that any specified conditions are met and any specified restrictions are complied with.

## 10. Control area facilities

(1) The Minister may, by notice in writing, to a port manager—

- (a) designate control areas in the port;
- (b) require the port manager to provide at the port manager's expense specified facilities in a control area for the purposes of the embarkation or disembarkation of passengers or their examination under this Schedule;
- (c) require conditions to be met and restrictions to be complied with in relation to the embarkation or disembarkation of passengers in a control area;
- (d) require the port manager to display, in specified locations in control areas; a notice containing specified information about the provisions of this Schedule in such form as may be prescribed.

(2) Where a port manager receives notice under sub-paragraph (1), the port manager shall take all reasonable steps to comply with any requirement set out in the notice.

#### 11. Information cards

(1) The Minister may, by order, make provision requiring a person who disembarks in Zambia from a ship or aircraft, if required to do so by an examining officer, to complete and produce to the officer a card containing such information in such form as the order may specify.

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

#### 12. Information from owner of vessel or aircraft

(1) This paragraph applies to a ship, vehicle or aircraft which arrives or is expected to arrive in Zambia.

(2) An examining officer may request an owner or agent of a ship, vehicle or aircraft to provide such information as the officer may require for the purposes of this Act.

(3) An owner or agent shall comply with a request made under sub-paragraph (2) within such period as the order may specify.

(4) A request to an owner or agent may relate—

- (a) to a particular ship, vehicle or aircraft;
- (b) to any passenger or member of the crew;
- (c) to all ships, vehicles or aircraft of the owner or agent; or
- (d) to a specified ship, vehicle or aircraft.

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

(6) Subparagraphs (2) and (5) shall not require the provision of information which is required to be provided under or by virtue of any provision made by or under the Immigration and Deportation Act.

#### 13. Offences

(1) A person who—

- (a) fails to comply with a duty imposed under or by virtue of this Schedule; or
- (b) contravenes a prohibition imposed under or by virtue of this Schedule; commits an offence and is liable, upon conviction, to imprisonment for a term not exceeding two years or to a fine not exceeding eighty thousand penalty units, or to both.

## FOURTH SCHEDULE

[Section 39]

### EXCLUSION ORDERS

#### 1. Interpretation

In this Schedule, "**examining officer**" has the meaning assigned to it in the Third Schedule.

#### 2. Duration

(1) An exclusion order may be revoked at any time by a further order made by the Minister.

(2) The revocation of an exclusion order against a person shall not prevent the making of a further exclusion order against the person.

#### 3. Notice of order

(1) A notice of the making of an exclusion order shall be served on the person against whom it has been made within fourteen days of the making of the order.

(2) Nothing in this paragraph imposes an obligation to take any steps to serve a notice on a person at a time when the person is outside Zambia.

(3) Where the person against whom an exclusion order is made is not for the time being detained by virtue of this Act, notice of the making of the order may be served on the person by posting it to the person's last known address or by the publication of a notice in the *Gazette* or newspaper of general circulation in the area.

#### 4. Directions for removal

(1) The Minister may give directions for the removal from Zambia of any person who is the subject of an exclusion order.

(2) Any person who without reasonable excuse fails to comply with directions given to that person under this paragraph commits an offence and is liable to imprisonment for a term not exceeding two years or to a fine not exceeding eighty thousand penalty units, or to both.

#### 5. Detention pending removal

(1) A person in respect of whom directions for removal may be given under paragraph 4 may be detained pending the giving of such directions and pending removal in pursuance of the directions.

(2) An examining officer may arrest, without warrant, a person liable to be detained under this paragraph.

(3) A captain of a ship or aircraft, if so required by an examining officer, shall prevent any person on board the ship or aircraft from disembarking in Zambia.

(4) Where a captain of a ship or aircraft is required to prevent a person from disembarking, the captain may for that purpose detain the person in custody on board the ship or aircraft.

(5) A captain of a ship or aircraft who fails to take reasonable steps to comply with a requirement imposed under this Act commits an offence and is liable to imprisonment for a term not exceeding two years or to a fine not exceeding eighty thousand penalty units or to both.

(6) An examining officer may remove a person from a vehicle for detention under this Act.

## 6. Provisions supplementary to detention

(1) If a magistrate is satisfied that there are reasonable grounds for suspecting that a person who is the subject of an exclusion order is to be found on any premises, the magistrate may grant a search warrant authorising any police officer to enter the premises for the purpose of searching for and arresting that person.

(2) A person detained under this Schedule shall be deemed to be in legal custody at any time when the person is detained in police custody in Zambia otherwise than on board a ship, vehicle or aircraft.

(3) Where a person is detained under this Schedule, any examining officer may take all such steps as may be reasonably necessary for identifying the person.

## **FIFTH SCHEDULE**

[Section 2(1)]

### COUNTER TERRORISM CONVENTIONS

1. The Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft of 1963;
2. The Convention for the Suppression of Unlawful Seizure of Aircraft of 1970;
3. The Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971 and the Protocol thereto of 1984;
4. The New York Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents of 1973;
5. The International Convention against the Taking of Hostages of 1979;
6. The Convention on the Physical Protection of Nuclear Material of 1980;
7. The United Nations Convention on the Law of the Sea of 1982;
8. The Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1988;
9. The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf of 1988;



10. The Convention for the Suppression of Unlawful Acts against Maritime Navigation of 1988;
11. The Convention on the Marking of Plastic Explosives of 1991;
12. The International Convention for the Suppression of Terrorist Bombings of 1997;
13. The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction of 1977;
14. The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971;
15. The Organisation of African Unity Convention on the Prevention and Combatting of Terrorism, 1999; and
16. The International Convention for the Suppression of the Financing of Terrorism, 1999.