

TERRORISM ACT 2018

February 2019

On the 22nd February 2018 HM Government of Gibraltar commenced most part of the Terrorism Act 2018. This newsletter highlights the main provisions of the Act in so far as it relates to Proscribed Terrorist Organisations, the financing of terrorism or providing support, including travel for the purposes of training for terrorism.

A copy of the Act can be downloaded from :

<https://www.gibraltarlaws.gov.gi/articles/2018-250.pdf>

The Commencement was via Legal Notice 38/2019

This newsletter is not, however, a substitute for seeking professional advice and has no legal standing.

The definition of Terrorism is widely accepted and for the purposes of the Terrorism Act 2018 (the “Act”) it is summarised as follows;

DEFINITION OF TERRORISM

The use or threat of action where–

- (a) it;
1. involves serious violence against a person;
 2. involves serious damage to property;
 3. endangers a person's life, other than that of the person committing the action;
 4. creates a serious risk to the health or safety of the public or a section of the public; or
 5. is designed seriously to interfere with or seriously to disrupt an electronic system,

and the person committing the action either intends or is reckless as to whether any of the matters set out in above is produced.

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

The “action” includes action outside of Gibraltar and the “person”, “public” or “property” is also to mean wherever he/she/they or it may be situated.

PROSCRIBED ORGANISATIONS

Gibraltar has adopted the UK list of Proscribed Terrorist Organisations rather than seeking to produce its own listing. This ensures that Gibraltar benefits from the UK’s intelligence and security services knowledge and experience in this field so that accurate and meaningful listings are applied to Gibraltar. Gibraltar will replicate the Schedule 2 of the UK’s Terrorism Act 2000 in Gibraltar law either by way of a publication in the Gazette of the listing or taking reasonable steps to bring the UK list to the attention of the public.

The current UK listing of proscribed organisations is found at this web location;

<https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2>

The UK listing was last updated on 22 December 2017.

Offences relating to Proscribed Organisations

There are a number of offences that can be committed by a person under the Act (S9-11) relating specifically to Proscribed Organisations, namely;

- if that person belongs or professes to belong to a proscribed organisation,
- he invites support for a proscribed organisation and the support is not, or is not restricted to, the provision of money or other property within the meaning of s35 (raising funds for terrorism),
- if he arranges, manages or assists in arranging or managing a meeting which he knows is to:
 - support a proscribed organisation;
 - further the activities of a proscribed organisation; or
 - be addressed by a person who belongs or professes to belong to a proscribed organisation,
- if he addresses a meeting and the purpose of his address is to encourage support for a proscribed organisation or to further its activities,
- if he wears an item of clothing; or wears, carries or displays an article; in such a way or in such circumstances as to arouse reasonable suspicion that he is a member or supporter of a proscribed organisation.

A number of defences exist relating to each of the above and penalties for any of the above range from imprisonment for up to ten years and/or a fine of up to £5,000 depending on which of the above he is found guilty of.

OFFENCES RELATING TO ACTS OF TERRORISM

The Act also elaborates a number of offences relating specifically to the act of terrorism, namely;

- s12. Encouragement of Terrorism.
- s13. Dissemination of terrorist publications.
- s16. Preparation of terrorist acts.
- s17. Training for terrorism.
- s19. Attendance at a place used for terrorist training.
- s20. Directing a terrorist organisation.
- s21. Possession for terrorist purposes.
- s22. Travelling abroad for the purpose of terrorism.
- s23. Funding travelling abroad for the purpose of terrorism.
- s24. Organising or otherwise facilitating travelling abroad for the purpose of terrorism.
- s25. Making and possession of devices or materials.
- s26. Misuse of devices or materials and misuse and damage of facilities.
- s27. Terrorist threats relating to devices, materials or facilities.
- s28. Forfeiture of devices, materials or facilities.
- s29. Trespassing, etc. on nuclear sites.
- s30. Collection of information.
- s31. Eliciting, publishing or communicating information about members of police, etc.

- s32. Use of noxious substances or things to cause harm and intimidate.
- s33. Hoaxes involving noxious substances or things.
- s34. Hostage-taking.

Travel relating to terrorism (including training)

As seen above there are three travel related offences (s22-s24) which deal specifically with traveling for the purposes of terrorism and it is worth examining these provisions (summarised below).

S22. Travelling abroad for the purpose of terrorism.

A person who travels or attempts to travel from Gibraltar to another country or territory for the purpose of-

- (a) the commission of, contribution to or participation in a terrorist offence; or
- (b) providing or receiving of training for terrorism, commits an offence.

S23. Funding travelling abroad for the purpose of terrorism.

A person who provides or collects, by any means, directly or indirectly, funds fully or partially enabling any person to travel abroad for the purpose of terrorism (i.e. the committal of the terrorist act itself or receiving training in terrorism) knowing or having reasonable cause to suspect that the funds are fully or partially intended to be used for this purpose commits an offence.

S24. Organising or otherwise facilitating travelling abroad for the purpose of terrorism.

A person who, by any means, organises or otherwise facilitates the travelling abroad of a person whom he knows or could reasonably be expected to know is travelling for the purpose of terrorism (i.e. the committal of the terrorist act itself or receiving training in terrorism).

TERRORIST FINANCING

It is important to note that the Act refers to “property” in many instances and it is worth noting the definition in S2 of the Act which is;

““property” is to be construed widely and includes property of any description including-

- (a) *assets of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible, and legal documents or instruments in any form including electronic or digital, evidencing title to or an interest in such assets;*
- (b) *not only such property as has been originally in the possession of or under the control of any person but also any property into or for which the same has been converted or*

exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise”.

The terrorist financing offences in the Act are broken down into the following;

S35. Raising funds for terrorism.

A person commits an offence if he:

1. Invites another to provide money or other property and intends that it should be used, or has reasonable cause to suspect that it may be used, in full or in part, for the purposes of terrorism.
2. Receives money or other property and intends that it should be used, or has reasonable cause to suspect that it may be used, in full or in part, for the purposes of terrorism.
3. Provides money or other property and knows or has reasonable cause to suspect that it will or may be used, in full or in part, for the purposes of terrorism.

S36. Use and possession of money or other property for terrorism.

A person commits an offence if he:

1. Uses money or other property for the purposes of terrorism.
2. Possesses money or other property and intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.

S37. Arranging funds for terrorism.

A person commits an offence if he enters into or becomes concerned in an arrangement as a result of which money or other property is made available or is to be made available to another and knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism.

S38. Insurance against payments made in response to terrorist demands.

An insurer under an insurance contract commits an offence if-

1. the insurer makes a payment under the contract, or purportedly under it;
2. the payment is made in respect of any money or other property that has been, or is to be, handed over in response to a demand made wholly or partly for the purposes of terrorism; and
3. the insurer or the person authorising the payment on the insurer's behalf knows or has reasonable cause to suspect that the money or other property has been, or is to be, handed over in response to such a demand.

S39. Money laundering.

A person commits an offence if he enters into or becomes concerned in an arrangement of terrorist property:

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

which facilitates the retention or control by or on behalf of another person of such property.

Non-regulated sector

S40 & 41. Disclosure of information: duty & permission.

It is important to note that there are two types of obligations to disclose a knowledge or suspicion each dealing with the regulated or non-regulated sectors.

S40 deals with the non-regulated sector and is summarised as follows;

A person commits an offence if he does not disclose to a constable as soon as is reasonably practicable-

- (a) his belief or suspicion that another person has committed an offence under any of sections 35 to 39 ; and
- (b) bases his belief or suspicion on information which comes to his attention-
 - i in the course of a trade, profession or business, or
 - ii in the course of his employment (whether or not in the course of a trade, profession or business).

There are protections for legal privileged information in this section.

S41 permits the disclosure to a police officer of-

- (a) a suspicion or belief that any money or other property is terrorist property or is derived from terrorist property;
- (b) any matter on which the suspicion or belief is based.

The section also removes any restriction on the disclosure of information imposed by statute or otherwise.

S42. Cooperation with police

By making a disclosure under s40 and S41 a person does not commit an offence under sections 35 to 39 if he receives the express consent from a police officer but only if the following conditions are met ;

- (a) after he becomes concerned in the transaction concerned;
- (b) on his own initiative; and
- (c) as soon as is reasonably practicable.

Similarly, a person commits an offence if a police officer forbids him to continue his involvement in the transaction or arrangement to which the disclosure relates and he continues his involvement.

S43. Arrangements with prior consent.

A person does not commit an offence under any of sections 35 to 39 by involvement in a transaction or an arrangement relating to money or other property if, before becoming involved, the person-

- (a) discloses to an authorised officer the person's suspicion or belief that the money or other property is terrorist property and the information on which the suspicion or belief is based; and
- (b) has the authorised officer's consent to becoming involved in the transaction or arrangement.

A person is treated as having an authorised officer's consent if before the end of the notice period (period of 7 working days starting with the first working day after the person makes the disclosure) the person does not receive notice from an authorised officer that consent is refused.

S44. Disclosure after entering into arrangements.

A person does not commit an offence under any of sections 35 to 39 by involvement in a transaction or an arrangement relating to money or other property if, after becoming involved, the person discloses to an authorised officer the person's suspicion or belief that the money or other property is terrorist property and the information on which the suspicion or belief is based.

This only applies where there is a reasonable excuse for the person's failure to make the disclosure before becoming involved in the transaction or arrangement and the disclosure is made on the person's own initiative and as soon as it is reasonably practicable for the person to make it.

This section does not apply to a person if an authorised officer forbids the person to continue involvement in the transaction or arrangement to which the disclosure relates and the person continues that involvement.

S45. Reasonable excuse for failure to disclose.

It is a defence for a person charged with an offence under any of sections 35 to 39 to prove that the person intended to make a disclosure of the kind mentioned in section 43 or 44 and there is a reasonable excuse for the person's failure to do so.

Regulated Sector

It should be noted that Schedule 2 of the Act lists the activities covered by the definition of the Regulated Sector.

S46. Failure to disclose: regulated sector.

A person commits an offence if **each** of the following three conditions is satisfied.

1. He;
 - (a) knows or suspects; or
 - (b) has reasonable grounds for knowing or suspecting, that another person has committed or attempted to commit an offence under any of sections 35 to 39.
2. That the information or other matter-
 - (a) on which his knowledge or suspicion is based; or
 - (b) which gives reasonable grounds for such knowledge or suspicion, came to him in the course of a business in the regulated sector.
3. He does not disclose the information or other matter to a police officer or a nominated officer as soon as is practicable after it comes to him.

A person does not commit an offence under this section if-

- (a) he has a reasonable excuse for not disclosing the information or other matter;
- (b) he is a professional legal adviser or relevant professional adviser (accountant, auditor or tax adviser who is a member of a professional body) and the information or other matter came to him in privileged circumstances;
- (c)
 - (i) the person is employed by, or is in partnership with, a professional legal adviser or relevant professional adviser to provide the adviser with assistance or support;
 - (ii) the information or other matter comes to the person in connection with the provision of such assistance or support; and
 - (iii) the information or other matter came to the adviser in privileged circumstances.

S47. Protected disclosures.

A disclosure which satisfies the following three conditions is not to be taken to breach any restriction on the disclosure of information (however imposed).

1. That the information or other matter disclosed came to the person making the disclosure (the discloser) in the course of a business in the regulated sector.
2. That the information or other matter-
 - (a) causes the discloser to know or suspect; or
 - (b) gives him reasonable grounds for knowing or suspecting, that another person has committed or attempted to commit an offence under any of sections 35 to 39.
3. The disclosure is made to a police officer or a nominated officer as soon as is practicable after the information or other matter comes to the discloser.

S49. Tipping off: regulated sector.

A person commits an offence if-

- (a) the person that the person or another person has made a disclosure under a provision of this Part-
 - i to a police officer;
 - ii in accordance with a procedure established by that person's employer for the making of disclosures under that provision;
 - iii to a nominated officer; or
 - iv to the GFIU;
- (b) the disclosure is likely to prejudice any investigation that might be conducted following the disclosure referred to in that subsection; and
- (c) the information on which the disclosure is based came to the person in the course of a business in the regulated sector.

A person also commits an offence if-

- (a) the person discloses that an investigation into allegations that an offence under this Part has been committed is being contemplated or is being carried out;
- (b) the disclosure is likely to prejudice that investigation; and
- (c) the information on which the disclosure is based came to the person in the course of a business in the regulated sector.

It should be noted that s50. Disclosures within an undertaking or group etc., s51. Other permitted disclosures between institutions etc. and s52. Other permitted disclosures etc. do permit disclosures in the circumstances described therein.

S50. Disclosures within an undertaking or group etc.

An employee, officer or partner of an undertaking does not commit an offence under section 49 if the disclosure is to an employee, officer or partner of the same undertaking.

A person also does not commit an offence under section 49 in respect of a disclosure by a credit institution or a financial institution if-

- (a) the disclosure is to a credit institution or a financial institution;
- (b) the institution to whom the disclosure is made is situated in a Member State or in a country or territory imposing equivalent money laundering requirements; and
- (c) both the institution making the disclosure and the institution to whom it is made belong to the same group.

S51. Other permitted disclosures between institutions etc.

This section applies to a disclosure-

- (a) by a credit institution to another credit institution;
- (b) by a financial institution to another financial institution;

- (c) by a professional legal adviser to another professional legal adviser; or
- (d) by a relevant professional adviser of a particular kind to another relevant professional adviser of the same kind.

A person does not commit an offence under section 49 in respect of a disclosure to which this section applies if-

- (a) the disclosure relates to-
 - (i) a client or former client of the institution or adviser making the disclosure and the institution or adviser to whom it is made,
 - (ii) a transaction involving them both, or
 - (iii) the provision of a service involving them both;
- (b) the disclosure is for the purpose only of preventing an offence under this Part of this Act;
- (c) the institution or adviser to whom the disclosure is made is situated in a Member State or in a country or territory imposing equivalent money laundering requirements; and
- (d) the institution or adviser making the disclosure and the institution or adviser to whom it is made are subject to equivalent duties of professional confidentiality and the protection of personal data (within the meaning of section 2 of the Data Protection Act 2004).

S52. Other permitted disclosures etc.

A person does not commit an offence under section 49 if the disclosure is-

- (a) to the authority that is the supervisory authority for that person by virtue of Part 1 of Schedule 2 of the Proceeds of Crime Act 2015; and
- (b) for the purpose of-
 - (i) the detection, investigation or prosecution of a criminal offence (whether in Gibraltar or elsewhere);
 - (ii) an investigation under the Proceeds of Crime Act 2015;
 - (iii) the enforcement of any order of a court under that Act.

DISCLOSURE OBLIGATIONS AND CONSENT MECHANISMS

Disclosure to the Police/GFIU

It is important to note at this juncture that the Act requires disclosure of knowledge or suspicion of terrorist financing activities to a “constable” or police” in the case of the non-regulated sector but for the regulated sector the reference in S49 is to a “police officer or nominated officer”. Sub-section 49(15) clarifies that the “police officer” reference in this section includes references to the police officers and customs officers in the GFIU. The nominated officer is the firm’s MLRO or equivalent under POCA.

Readers in the regulated sector should therefore adopt the same reporting mechanisms that exist for ML suspicions using the on-line Themis platform that has recently been implemented by GFIU for disclosures under POCA.

Regulated firms should therefore not adopt separate reporting mechanisms for reports under this Act and continue to treat GFIU as the central reporting location for all suspicions.

In many of the following sections the term “authorised officer” is also used and it means a police officer or a customs officer and include references to the police officers and customs officers in the GFIU.

CONCLUSIONS

The new Terrorism Act expands and clarifies many of the offences, in particular those relating to the financing of terrorism and introduces new ones in respect of Proscribed Organisations for which persons who have obligations under Act will need to become aware of and provide training and processes for staff to follow.

The reporting and consent mechanisms applied under the Proceeds of Crimes Act should continue to apply as would any internal reporting processes etc. Further guidance on reporting requirements should be expected shortly by way of Supervisory Guidance or communicated by GFIU itself.

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