

2019-06-04

OBJECTS AND REASONS

This Bill would amend the *Anti-Terrorism Act*, Cap. 158 and alter the *Constitution* to the extent necessary to give effect to certain provisions of that Act.

Arrangement of Sections

1. Short title
2. Repeal and replacement of long title of Cap. 158
3. Repeal and replacement of section 1 of Cap. 158
4. Amendment of section 2 of Cap. 158
5. Amendment of section 3 of Cap. 158
6. Amendment of section 3A of Cap. 158
7. Repeal and replacement of section 4 of Cap. 158
8. Repeal and replacement of Part IV of Cap. 158
9. Insertion of section 12A into Cap. 158
10. Repeal and replacement of section 15 of Cap. 158
11. Insertion of new Schedule into Cap. 158
12. Consequential amendments

FIRST SCHEDULE

States and Related State Actors

SECOND SCHEDULE

Consequential Amendments

BARBADOS

A Bill entitled

An Act to amend the *Anti-Terrorism Act* and to alter the *Constitution* to the extent necessary to give effect to certain provisions of that Act.

ENACTED by the Parliament of Barbados in accordance with section 49 of the *Constitution* as follows:

Short title

1. This Act may be cited as the *Anti-Terrorism (Amendment) Act, 2019*.

Repeal and replacement of long title of Cap. 158

2. *The long title to the Anti-Terrorism Act, Cap. 158, in this Act referred to as the principal Act, is deleted and the following substituted:*

“An Act to

- (a) implement the United Nations Convention respecting the Suppression of the Financing of Terrorism and United Nations Security Council Resolutions relating to terrorism, and provide generally for preventing and combatting terrorism and its financing;
- (b) implement United Nations Security Council Resolutions relating to the prevention, suppression and disruption of the proliferation of weapons of mass destruction and its financing and provide generally for preventing, suppressing and disrupting the proliferation of weapons of mass destruction and its financing; and
- (c) alter section 16 of the *Constitution* to any extent necessary for such implementation,

and provide for related matters.”.

Repeal and replacement of section 1 of Cap. 158

3. *Section 1 of the principal Act is repealed and the following substituted:*

“Short title

1. This Act may be cited as the *Anti-Terrorism and Counter-Proliferation of Weapons of Mass Destruction Act*.”.

Amendment of section 2 of Cap. 158**4. Section 2 of the principal Act is amended****(a) by inserting in alphabetical order, the following definitions:**

“counter-proliferation order” means an order of the Court declaring a person to be a listed person;

“financial institution” has the meaning assigned to it by section 2 of the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011* (Act 2011-23);

“financial services” includes the services described in the First Schedule to the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011* (Act 2011-23);

“listed person” has the meaning assigned to it by section 10A;

“non-financial business entity or professional” has the meaning assigned to it by section 2 of the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011* (Act 2011-23);

“property” includes funds, whether situated in Barbados or elsewhere, and any legal or equitable interest, whether full or partial, in property;

“related State actor” has the meaning assigned to it by section 10A;

“restraining order” has the meaning assigned to it by section 2 of the *Proceeds and Instrumentalities of Crime Act, 2019* (Act 2019-17);

“vessel” has the meaning assigned to it by section 46 of the *Interpretation Act, Cap. 1.*”;

- (b) *in the definition of “funds”, by deleting the word “as” and substituting the word “including”; and*
- (c) *in the definition of “terrorist designation order” by deleting the full-stop and substituting a semi-colon.*

Amendment of section 3 of Cap. 158

5. Section 3 of the principal Act is amended

- (a) *in subsection (1)*
 - (i) *by inserting after the word “indictment”, the words “is liable to imprisonment for life.”; and*
 - (ii) *by deleting paragraphs (c) and (d); and*
- (b) *by deleting subsection (3).*

Amendment of section 3A of Cap. 158

6. Section 3A(1) of the principal Act is amended by deleting the word “25” and substituting the word “30”.

Repeal and replacement of section 4 of Cap. 158

7. Section 4 of the principal Act is repealed and the following substituted:

“Providing or collecting funds for the purpose of terrorism

4.(1) A person who in or outside Barbados directly or indirectly, unlawfully and wilfully, provides or collects funds or provides financial services or makes such services available to persons, in any case, with

the intention that the funds or services are to be used, or with the knowledge that the funds or services are to be used, in full or in part

- (a) in order to carry out an act described in section 3(1);
- (b) for the travel of an individual to a State other than his State of nationality or residence for the purpose of committing, planning, preparing for, or participating in, an act described in section 3(1) or of providing or receiving training in committing, planning, preparing for, or participating in such an act;
- (c) by a person in respect of whom a terrorist designation order or counter-proliferation order is in force; or
- (d) by a related State actor in association with any act, plot, threat or programme connected with the proliferation of weapons of mass destruction,

is guilty of an offence and is liable on conviction on indictment to imprisonment for a term of 30 years.

(2) For an act to constitute an offence under subsection (1), it is not necessary to prove that the funds or the financial services were actually used to carry out the offence.

(3) A person who

- (a) aids, abets, counsels, procures, incites or solicits the commission of an offence; or
- (b) conspires with another or others to commit an offence under subsection (1), is liable on conviction on indictment to be punished as a principal offender under that subsection.

(4) For the avoidance of doubt, a person does not contravene subsection (1)(c) or (d) where he acts in accordance with a restraining order.”.

Repeal and replacement of Part IV of Cap. 158

8. *Part IV of the principal Act is repealed and the following substituted:*

“PART IV

DESIGNATION OF PERSONS AS TERRORISTS AND
TERRORIST ENTITIES

Designation of terrorists and terrorist entities

8.(1) The Director of Public Prosecutions may apply to a judge in Chambers for an order designating a person as a terrorist or terrorist entity, as the case may be, where

- (a) the person is included in a list of individuals and entities designated by, or under the authority of, the United Nations Security Council as terrorists or terrorist entities;
 - (b) the Director of Public Prosecutions has reasonable grounds to believe that the person has committed or participated in the commission of an offence referred to in section 3, 3A or 4;
or
 - (c) a request to designate a person as a terrorist or terrorist entity is transmitted to Barbados from another country, is supported by reasonable grounds for the designation and is accepted by Barbados.
- (2) An application for a terrorist designation order shall be
- (a) made without delay and without notice; and
 - (b) supported by affidavit deposing to the matters set out in subsection (1)(a) or (b), as the case may be.

(3) Where the Director of Public Prosecutions applies for a terrorist designation order, he shall at the same time apply to the judge for a restraining order to

(a) freeze any

- (i) property of the person against whom the terrorist designation order is made;
- (ii) property that is wholly or jointly owned or controlled, directly or indirectly, by the person against whom the terrorist designation order is made;
- (iii) property that is derived or generated from other property owned or controlled, directly or indirectly, by the person against whom the terrorist designation order is made;
- (iv) property of a person acting on behalf of, or at the direction of, the person against whom the terrorist designation order is made,

where such property is situated in Barbados; and

(b) prohibit the person against whom the terrorist designation order is made, directly or indirectly, from possessing, controlling or having access to any property.

(4) The judge shall without delay

(a) make the terrorist designation order against the person where he is satisfied of the circumstances set out in subsection (1) (a) or (b) in relation to the person; and

(b) where he makes the terrorist designation order, make, in accordance with the *Proceeds and Instrumentalities of Crime Act, 2019* (Act 2019-17), a restraining order, where the requirements for the making of the restraining order under that Act are satisfied.

- (5) A person against whom a terrorist designation order is made may, within 60 days of the making of the order, appeal to the Court of Appeal against the decision of the judge and shall give the Director of Public Prosecutions at least 14 days' notice of the application.
- (6) The Director of Public Prosecutions may, within 30 days of the decision of a judge not to make a terrorist designation order against a person, appeal to the Court of Appeal against the decision and shall give such notice to the person as the court may require.
- (7) The Court of Appeal shall, upon an appeal under this section
- (a) hear any evidence or other information that may be presented by the Director of Public Prosecutions and may, at the request of the Director of Public Prosecutions, hear all or part of that evidence or information in the absence of the person concerned or any attorney-at-law representing the person, where the court is of the opinion that the disclosure of the evidence or information would be prejudicial to national security or endanger the safety of any person;
 - (b) provide the person concerned with a statement summarizing the evidence or information available to the court in order to reasonably inform the person of the reasons for the making of the terrorist designation order, without disclosing any evidence or information the disclosure of which would, in the opinion of the court, be prejudicial to national security or endanger the safety of any person;
 - (c) provide the person concerned with a reasonable opportunity to be heard; and
 - (d) direct the judge to make, confirm, vary or set aside the terrorist designation order, as the court considers appropriate.
- (8) Notwithstanding anything to the contrary in the *Evidence Act*, Cap. 121, evidence shall not be excluded on the ground that it is hearsay,

of whatever degree, in proceedings for a terrorist designation order or on an appeal under this section.

Review of terrorist designation orders

9.(1) The Director of Public Prosecutions shall every 6 months review every terrorist designation order made under section 8 in order to determine whether the circumstances referred to in section 8(1) continue to exist in respect of the person against whom the order was made.

(2) Where pursuant to a review referred to in subsection (1) or from information the Director of Public Prosecutions otherwise receives, he determines that the circumstances which led to a terrorist designation order being made against a person have changed or no longer exist, the Director of Public Prosecutions shall, in a timely manner, apply to a judge in Chambers for the variation or setting aside, as may be appropriate, of

- (a) the terrorist designation order; and
- (b) any restraining order made in relation to the terrorist designation order,

and the judge may make such further orders as he thinks fit.

(3) Without prejudice to the generality of subsection (2), the judge shall, where he is satisfied that the circumstances which led to a terrorist designation order being made against a person no longer exist, set aside the terrorist designation order and the restraining order.

Publication of terrorism designation orders etc.

10.(1) The Director of Public Prosecutions shall, where a judge makes, confirms, varies or sets aside a terrorism designation order or a related restraining order, cause notice of the decision to be published

- (a) electronically immediately; and

(b) in the *Official Gazette* and at least 2 daily newspapers in circulation in Barbados, as soon as possible.

(2) A notice referred to in subsection (1) shall contain sufficient particulars to enable any person, including any financial institution and non-financial business entity or professional, who may be affected by the decision to be reliably and adequately informed of the decision.

PART IVA

COUNTER-PROLIFERATION MEASURES

Interpretation of certain terms in Part IVA

10A.(1) For the purposes of this Part,

“listed person” means an individual, entity or vessel included in a list established by, or under the authority of, the United Nations Security Council as a list of individuals, entities or vessels against which measures for the prevention, suppression and disruption of the proliferation of weapons of mass destruction and its financing are required to be taken;

“related State actor” means an individual, entity or government which

(a) is connected with a State listed in Column 1 of the *Third Schedule*;

(b) has been identified by or under the authority of the United Nations Security Council as an individual, entity or government against which measures for the prevention, suppression and disruption of the proliferation of weapons of mass destruction and its financing are required to be taken; and

(c) is listed in Column 2 of the *Third Schedule*.

(2) The Minister may by Order amend the *Third Schedule*.

Making counter-proliferation orders in respect of listed persons

10B.(1) The Director of Public Prosecutions may apply to a judge in Chambers for a counter-proliferation order against a person where the person is a listed person.

(2) An application for a counter-proliferation order shall be

- (a) made without delay and without notice; and
- (b) supported by affidavit deposing to the matters set out in subsection (1).

(3) Where the Director of Public Prosecutions applies for a counter-proliferation order, he shall at the same time apply to the judge for a restraining order to

- (a) freeze any
 - (i) property of the listed person;
 - (ii) property that is wholly or jointly owned or controlled, directly or indirectly, by the listed person;
 - (iii) property that is derived or generated from property or other assets owned or controlled, directly or indirectly, by the listed person;
 - (iv) property of a person acting on behalf of, or at the direction of, the listed person,

where such property is situated in Barbados; and

- (b) prohibit the listed person, directly or indirectly, from possessing, controlling or having access to any property.

- (4) The judge shall without delay
- (a) make the counter-proliferation order against the person where he is satisfied of the circumstances set out in subsection (1) in relation to the person; and
 - (b) where he makes the counter-proliferation order, make, in accordance with the *Proceeds and Instrumentalities of Crime Act, 2019* (Act 2019-17), a restraining order where the requirements for the making of the restraining order under that Act are satisfied.
- (5) Sections 8(5) to (8), 9 and 10 apply with such adaptations and modifications as may be necessary to a counter-proliferation order and the person against whom that order and any related restraining order was made as those sections apply to a terrorist designation order and the person against whom the terrorist designation order and any related restraining order was made.

Restraining orders in respect of related State actors

10C.(1) The Director of Public Prosecutions shall, without delay, apply to a judge in Chambers for a restraining order to freeze all property of

- (a) a related State actor;
- (b) a person controlled by a related State actor;
- (c) a person acting on behalf of, or at the direction of, a related State actor,

which is associated with any act, plot, threat or programme connected with the proliferation of weapons of mass destruction and is situated in Barbados.

(2) The judge shall make the restraining order in accordance with the *Proceeds and Instrumentalities of Crime Act, 2019* (Act 2019-17)

where the requirements for the making of the restraining order under that Act are satisfied.

(3) Sections 8(5) to (8), 9 and 10 apply with such adaptations and modifications as may be necessary to a related State actor and a restraining order made under subsection (2) as those sections apply to a person against whom a terrorist designation order, and any related restraining order, was made.”.

Insertion of section 12A into Cap. 158

9. *The principal Act is amended by inserting after section 12, the following:*

“Attempted offences

12A. A person who attempts to commit an offence under this Act is guilty of an offence and is liable on conviction on indictment to be punished as a principal offender in relation to the offence attempted.”.

Repeal and replacement of section 15 of Cap. 158

10. *Section 15 of the principal Act is repealed and the following substituted:*

“Attorney-General to be competent authority

15. The Attorney-General is the competent authority of Barbados for

- (a) the exchange of information relating to criminal investigations or extradition proceedings in respect of an offence under this Act; and

- (b) the purpose of proposing any addition or removal of the name of a person from a list referred to in section 8(1) or 10A.

Act 2011-23 to apply to financing of proliferation of weapons of mass destruction etc.

16.(1) The *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011* (Act 2011-23) applies, with such adaptations and modifications as may be necessary, to the financing of the proliferation of weapons of mass destruction as that Act applies to the financing of terrorism.

(2) Without prejudice to the generality of subsection (1), for the purpose of preventing, suppressing and disrupting the financing of the proliferation of weapons of mass destruction, in the application of sections 15, 17, 19, 21, 23, 26, 41 and 43 of the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011* (Act 2011-23), the words “financing of terrorism” in that Act shall be construed to include “financing of the proliferation of weapons of mass destruction”.

Alteration of Constitution

16A. Section 16 of the *Constitution* is altered to the extent necessary to give effect to sections 8, 10B and 10C.”.

Insertion of new Schedule into Cap. 158

11. *The principal Act is amended by inserting as the Third Schedule thereto, the Schedule set out in the First Schedule to this Act.*

Consequential amendments

12. *The enactments set out in Column 1 of the Second Schedule are amended to the extent set out opposite thereto in Column 2.*

FIRST SCHEDULE

(Section 11)

"THIRD SCHEDULE

(Section 10A)

States and State Actors

Column 1

Column 2

States

Related State Actors

Democratic People's Republic of Korea

1. The Government of the Democratic People's Republic of Korea
2. The Worker's Party of Korea".

SECOND SCHEDULE

(Section 12)

CONSEQUENTIAL AMENDMENTS

Column 1	Column 2
Enactments	Amendments
1. <i>Mutual Assistance in Criminal Matters Act</i> , Cap. 140A	1. In section 18(1), insert after the word " <i>Anti-Terrorism</i> ", the words " <i>and Counter-Proliferation of Weapons of Mass Destruction</i> ". 2. In section 29(1)(c), insert after the word " <i>Anti-Terrorism</i> ", the words " <i>and Counter-Proliferation of Weapons of Mass Destruction</i> ".
2. <i>Extradition Act</i> , Cap. 189	1. In section 7(3), delete the words "under section 3 or 4 of the <i>Anti-Terrorism Act</i> , Cap. 158" and substitute the words "in section 3, 3A or 4 of the <i>Anti-Terrorism and Counter-Proliferation of Weapons of Mass Destruction Act</i> , Cap. 158". 2. In paragraph 38 of the <i>Schedule</i> , insert after the word " <i>Anti-Terrorism</i> ", the words " <i>and Counter-Proliferation of Weapons of Mass Destruction</i> ".
3. <i>Charities Act</i> , Cap. 243	In section 38(1A), delete the words "section 3 or 4 of the <i>Anti-Terrorism Act</i> " and substitute the words "section 3, 3A or 4 of the <i>Anti-Terrorism and Counter-Proliferation of Weapons of Mass Destruction Act</i> , Cap. 158".
4. <i>Civil Aviation Act</i> , Cap. 288B	1. In section 35(6)(a)(ii), insert after the word " <i>Anti-Terrorism</i> ", the words " <i>and Counter-Proliferation of Weapons of Mass Destruction</i> ". 2. In section 37(1), insert after the word " <i>Anti-Terrorism</i> ", the words " <i>and Counter-Proliferation of Weapons of Mass Destruction</i> ".

Second Schedule - (Cont'd)

CONSEQUENTIAL AMENDMENTS - (Cont'd)

Column 1	Column 2
Enactments	Amendments
5. <i>Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011</i> (Act 2011-23)	<ol style="list-style-type: none"> 1. In section 2, in the definition of "financing of terrorism", insert after the word "<i>Anti-Terrorism</i>", the words "<i>and Counter-Proliferation of Weapons of Mass Destruction</i>". 2. In section 23 <ol style="list-style-type: none"> (a) in subsection (1)(a)(iv), insert after the word "order", the words "or counter-proliferation order"; and (b) delete subsection (2) and substitute the following: <p style="margin-left: 40px;">"(2) In subsection (1)(a)(iv), "terrorist designation order" and "counter-proliferation order" have the meanings assigned to them respectively by the <i>Anti-Terrorism and Counter-Proliferation of Weapons of Mass Destruction Act</i>, Cap. 158."</p>
6. <i>Criminal Assets Recovery Fund Act, 2016</i> (Act 2016-10)	<ol style="list-style-type: none"> 1. In section 4(a), insert after the word "<i>Anti-Terrorism</i>", the words "<i>and Counter-Proliferation of Weapons of Mass Destruction</i>". 2. In section 6, insert after the word "<i>Anti-Terrorism</i>" wherever it appears, the words "<i>and Counter-Proliferation of Weapons of Mass Destruction</i>".

Second Schedule - (Cont'd)

CONSEQUENTIAL AMENDMENTS - (Cont'd)

Column 1	Column 2
Enactments	Amendments
7. <i>Proceeds and Instrumentalities of Crime Act, 2019</i> (Act 2019-17)	<p>1. In section 2</p> <p>(a) insert in alphabetical order, the following definitions:</p> <p style="padding-left: 40px;">"counter-proliferation order" has the meaning assigned to it by section 2 of the <i>Anti-Terrorism and Counter-Proliferation of Weapons of Mass Destruction Act</i>, Cap. 158;</p> <p style="padding-left: 40px;">"related State actor" has the meaning assigned to it by section 2 of the <i>Anti-Terrorism and Counter-Proliferation of Weapons of Mass Destruction Act</i>, Cap. 158;"; and</p> <p>(b) in the definition of "terrorist designation order", insert after the word "<i>Anti-Terrorism</i>", the words "<i>and Counter-Proliferation of Weapons of Mass Destruction</i>".</p> <p>2. In section 52</p> <p>(a) delete subsection(1)(i) and substitute the following:</p> <p style="padding-left: 40px;">"(i) the person in respect of whom the powers conferred by section 54 are sought to be exercised has had a terrorist designation order or counter-proliferation order made against him or is, or is connected to, a related State actor;"; and</p>

Second Schedule - (Cont'd)

CONSEQUENTIAL AMENDMENTS - (Cont'd)

Column 1	Column 2
Enactments	Amendments
<p>7. <i>Proceeds and Instrumentalities of Crime Act, 2019</i> (Act 2019-17) - (Cont'd)</p>	<p>(b) in subsection (4),</p> <p>(i) delete paragraph (a)(i) and substitute the following:</p> <p style="padding-left: 40px;">"(i) the defendant are to the alleged offender or the person against whom the terrorist designation order or counter-proliferation order is in force or who is, or is connected to, a related State actor; and"; and</p> <p>(ii) delete paragraph (b) and substitute the following:</p> <p style="padding-left: 40px;">"(b) section 12(2) has effect as if proceedings for the offence had been instituted against the defendant</p> <p style="padding-left: 80px;">(i) when the investigation was started;</p> <p style="padding-left: 80px;">(ii) where a terrorist designation or counter-proliferation order is involved, when the order came into force; or</p> <p style="padding-left: 80px;">(iii) where a related State actor is involved, when the person became a related State actor."</p>

Second Schedule - (Cont'd)

CONSEQUENTIAL AMENDMENTS - (Cont'd)

Column 1	Column 2
Enactments	Amendments
<p>7. <i>Proceeds and Instrumentalities of Crime Act, 2019</i> (Act 2019-17) - (Cont'd)</p>	<p>3. Delete section 53(2) and substitute the following:</p> <p style="padding-left: 40px;">"(2) Notwithstanding subsection (1), where the defendant is a person in respect of whom a terrorist designation order or counter-proliferation order is in force or is a related State actor</p> <p style="padding-left: 80px;">(a) an application for a restraining order shall be made without notice; and</p> <p style="padding-left: 80px;">(b) it shall be sufficient to provide with the application, the information set out in subsection (1)(b)(v) and (vi)."</p> <p>4. Insert after section 54(3), the following:</p> <p style="padding-left: 40px;">"(3A) For the avoidance of doubt and notwithstanding subsection (3), where a restraining order is made under section 8, 10B or 10C of the <i>Anti-Terrorism and Counter-Proliferation of Weapons of Mass Destruction Act</i>, Cap. 158</p> <p style="padding-left: 80px;">(a) other provision, although not expressly stated in subsection (3), may be made in the restraining order where such provision is consistent with the United Nations Security Council Resolutions pursuant to which the order was made;</p>

Second Schedule - (Cont'd)

CONSEQUENTIAL AMENDMENTS - (Cont'd)

Column 1	Column 2
Enactments	Amendments
<p>7. <i>Proceeds and Instrumentalities of Crime Act, 2019</i> (Act 2019-17) - (Cont'd)</p>	<p>(b) no provision shall be made in the restraining order that is inconsistent with the resolutions referred to in paragraph (a); and</p> <p>(c) any requirements, including notification to the United Nations Security Council, to be satisfied pursuant to the resolutions referred to in paragraph (a) shall be complied with before provision for expenses is made."</p>
	<p>5. Insert after section 156, the following:</p> <p style="text-align: center;">"Certain dealing permitted notwithstanding restraining order or freezing order</p> <p>156A. (1) Nothing in this Act shall prohibit</p> <p>(a) the addition of interest or other earnings due on an account to which a restraining order or freezing order applies, provided that such interest or earnings are also restrained or frozen; or</p> <p>(b) the making of a payment due under any contract or other agreement or obligation that arose prior to the making of the restraining order or freezing order,</p>

Second Schedule - (Concl'd)

CONSEQUENTIAL AMENDMENTS - (Concl'd)

Column 1	Column 2
Enactments	Amendments
<p>7. <i>Proceeds and Instrumentalities of Crime Act, 2019</i> (Act 2019-17) - (Concl'd)</p>	<p>and the Court may make in the restraining order or freezing order, such provision as it thinks fit to give effect to paragraphs (a) and (b).</p> <p>(2) Notwithstanding subsection (1), where a restraining order is made under section 8, 10B or 10C of the <i>Anti-Terrorism and Counter-Proliferation of Weapons of Mass Destruction Act</i>, Cap. 158</p> <p>(a) subsection (1)(b) shall not operate in any manner that is inconsistent with any United Nations Security Council Resolutions pursuant to which the order was made; and</p> <p>(b) any requirements, including notification to the United Nations Security Council, to be satisfied pursuant to the resolutions referred to in paragraph (a), shall be complied with before any payments are allowed."</p>