

《2003年聯合國(反恐怖主義措施)(修訂)條例草案》委員會

目的

本文件旨在回應委員會在二零零四年四月十五日的會議上，就《聯合國(反恐怖主義措施)條例》(第 575 章)第 8、9 和 10 條提出的建議，以及在二零零四年五月四日的會議上提出的事項。

第 8、9 和新訂第 10 條 禁止向恐怖分子和與恐怖分子有聯繫者提供資金等；禁止向恐怖分子和與恐怖分子有聯繫者供應武器；禁止為恐怖分子集團招募等

2. 有議員建議以“罔顧”取代第 8、9 和新訂第 10 條中“有合理理由相信”的思想元素。我們研究過此建議的影響，認為就第 8、9 和 10(1)條而言，此建議可予接受。我們會擬備所需的擬議委員會審議階段修正案(修正案)。

3. 按照 R v Caldwell [1982] AC 341 和 R v Lawrence [1982] AC 510 兩案，“罔顧”要求控方證明犯案者作出會產生明顯危險的行為，而當他作出該行為時

- (a) 沒有考慮過會產生任何該等危險的可能性；或
- (b) 已認知會產生該等危險，但仍然作出該行為。

“罔顧”是客觀的舉證標準，即須證明對一個正常謹慎的人而言，該等危險是明顯的。

4. 如將“罔顧”應用於第 8、9 和新訂第 10(1)條，控方須證明犯案者

- (a) 沒有考慮過有關人士是“恐怖分子”或“與恐怖分子有聯繫者”，而在有關情況下，有關人士是“恐怖分子”或“與恐怖分子有聯繫者”的危險是明顯的；或

- (b) 已認知有關人士是“恐怖分子”或“與恐怖分子有聯繫者”，不過仍然進行有關罪行。

5. 我們會進一步研究“罔顧”是否適用於新訂第 10(2) 條下的罪行，並會向委員會作出回應。

第 3 條 某些條文在特區以外適用

6. 有議員建議在第 3 條下增訂條文，以清晰訂明該條的實施並不影響其他法例和普通法下現行有關域外管轄權的條文。我們認為現有的第 3 條不會影響其他現行有關域外管轄權的條文，因此並無需要加入建議的新增條文。

新訂第 11B 條 對訂明標的的爆炸的禁制

7. 委員會要求我們就新訂第 11B 下的爆炸罪行和現行類似的刑事罪行，在罪行的範圍、域外管轄權和罰則三方面，作出比較。我們正整理所需的資料以提交予委員會。

新訂第 11E 條 關乎船舶的禁制

8. 委員會要求我們解釋新訂第 11E(1)(a)條中“任何其他形式的威嚇”的涵義。該等措辭源自《制止危及海上航行安全非法行為公約》(《公約》)第 3 條第 1 款，由於新訂第 11E 條旨在訂定罪行，以實施《公約》第 3 條第 1 款，因此上述措辭的涵義必須等同其在《公約》中的涵義。條約須按照其目標和目的而詮釋，而《公約》的目標和目的是防止危及海上航行安全的非法行為，因此，會導致船舶被奪取或控制的任何形式的威嚇，均為條文涵蓋。澳洲的《1992 年刑事罪行(船舶及固定平台)法令》、加拿大的《刑事罪行法典》、新西蘭的《1999 年海上刑事罪行法令》和《美國法典》第 18 章，均實施《公約》的規定，其有關條文都載有“任何其他形式/種類的威嚇”的措辭。

新訂第 4A 和 4B 部 執法權力

9. 有議員建議增訂條文，以清晰訂明新訂的第 4A 和 4B 部並不影響第 2(5)(c)條對免使自己入罪特權的保障。我們

同意此建議，並會擬備所需的修正案。

10. 有議員建議，新訂第 4A 部應採用《有組織及嚴重罪行條例》(第 455 章)中有關執法權力的運作機制，以及“獲授權人員”的定義。我們同意此建議，並會擬備所需的修正案。

新訂第 12G 條 搜查令的發出

11. 有議員建議改善新訂第 12G(1)條的草擬方式，以訂明法庭可發出手令，授權執法機關進入處所，並於處所內搜尋、檢取、移走和扣留任何恐怖分子財產；並訂明執法機關可使用所需和合理的協助以及武力，以執行手令。我們同意此建議，並會擬備所需的修正案。

保安局

二零零四年五月

Draft

UNITED NATIONS (ANTI-TERRORISM MEASURES)(AMENDMENT) BILL 2003

COMMITTEE STAGEAmendments to be moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
2(a)	<p>(a) By adding –</p> <p>“(ia) in the definition of “terrorist act” in paragraph (a)(i) –</p> <p>(A) by repealing “(including, in the case of a threat, the action if carried out)” and substituting “is carried out with the intention of, or the threat is made with the intention of using action that would have the effect of”;</p> <p>(B) in sub-subparagraphs (A) and (B), by repealing “causes” and substituting “causing”;</p> <p>(C) in sub-subparagraph (C), by repealing “endangers” and substituting “endangering”;</p> <p>(D) in sub-subparagraph (D), by repealing “creates” and substituting “creating”;</p> <p>(E) in sub-subparagraphs (E) and (F), by repealing “is intended seriously to interfere with or seriously to disrupt” and</p>

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substituting “seriously interfering with or seriously disrupting”;

- (b) In subparagraph (iii) –
- (i) in the proposed definition of “premises” in paragraph (b) by deleting “removable” and substituting “movable”;
 - (ii) by deleting the proposed definition of “public body”.

2 By deleting paragraph (b).

5 In paragraph (g) by adding –

“(11) The Secretary may exercise the powers under subsection (10) only if he has reasonable cause to suspect that the relevant property will be removed from the HKSAR.”.

New By adding –

“5A. Prohibition on provision or collection of funds to commit terrorist acts

Section 7 is amended –

- (a) in paragraph (a), by repealing “directly or indirectly supplied to or otherwise used by” and substituting “used”;
- (b) in paragraph (b) –
 - (i) by repealing “or having reasonable grounds to believe”;
 - (ii) by repealing “directly or indirectly supplied to or otherwise used by” and substituting “used”;

- (c) by repealing “a person who the first-mentioned person knows or has reasonable grounds to believe is a terrorist or terrorist associate” and substituting “to commit a terrorist act (whether or not the funds are actually so used)”.

6 By deleting the proposed section 10 and substituting –

“10. Prohibition on recruitment, etc. to a body specified in a section 4(1) notice or a section 5(2) order

- (1) A person shall not –
 - (a) recruit another person to become a member; or
 - (b) become a member,

of a body specified in a notice published in the Gazette under section 4(1) or (2) or an order published in the Gazette under section 5(3), knowing or having reasonable grounds to believe that it is a body specified in such a notice or order (as the case may be).

(2) Where a person is a member of a body specified in a notice published in the Gazette under section 4(1) or (2) or an order published in the Gazette under section 5(3), the person shall, as soon as practicable after it comes to his knowledge or he has reasonable grounds to believe that the body is specified in such a notice or order (as the case may be), take all practicable steps to cease to be such a member.

(3) In this section, “body” () means a body of persons, whether corporate or unincorporate.”.

- 7 (a) In the proposed section 11B –
 - (i) in subsection (1) by adding “unlawfully and intentionally” after “not”;
 - (ii) in subsection (2) by adding “unlawfully and intentionally” after “not”;
 - (iii) in subsection (2)(a) by deleting “the destruction of all or part” and substituting “extensive destruction”;
 - (iv) by deleting subsection (2)(b) and substituting –
 - “(b) where such destruction results in or is likely to result in major economic loss.”.
- (b) In the proposed section 11E(1) by deleting “without lawful excuse,” and substituting “unlawfully and”.
- (c) In the proposed section 11F(1) by deleting “without lawful excuse,” and substituting “unlawfully and”.

- 8 In the proposed section 12(6) –
 - (a) in paragraph (a) by adding “, for the purpose of preventing and suppressing the financing of terrorist acts” after “Corruption”;
 - (b) by deleting paragraph (b) and substituting –
 - “(b) by any authorized officer to the authorities or persons responsible for investigating or preventing terrorist acts, or handling the disclosure of knowledge or suspicion that any property is terrorist property, of any place outside the HKSAR which the

authorized officer thinks fit, for the purpose of preventing and suppressing the financing of terrorist acts.”.

- 9 (a) In the proposed section 12A –
- (i) by deleting subsection (3)(c)(ii) and substituting –
 - “(ii) to produce any material, or any material of a class, that reasonably appears to the authorized officer to be relevant to the investigation,”;
 - (ii) in subsection (6) –
 - (A) by deleting “to relate to any matter relevant to an investigation, or any material of a class that reasonably appears to him so to relate” and substituting “to be relevant to the investigation or be of a class that is so relevant”;
 - (B) by deleting “so to relate or any material of a specified class that reasonably appears to him so to relate” and substituting “to be so relevant or any material of a specified class that reasonably appears to him to be so relevant”;
 - (iii) in subsection (7)(c) by deleting “subsections (8), (9) and (10)” and substituting “subsection (8)”;
 - (iv) by deleting subsections (9) and (10);
 - (v) in subsection (11) by deleting “A person” and substituting “Subject to section 2(5)(a) and (b), a person”;

- (vi) in subsection (12) by deleting everything after “except” and substituting “in evidence in proceedings under section 14(7F) or under section 36 of the Crimes Ordinance (Cap. 200).”.
- (b) In the proposed section 12B –
 - (i) in subsection (2) by deleting “subsections (6) and (7)” and substituting “subsection (6)”;
 - (ii) by deleting subsections (7) and (12);
 - (iii) in subsection (13) by deleting “A person” and substituting “Subject to section 2(5)(a) and (b), a person”.
- (c) In the proposed section 12D(2) –
 - (i) in paragraph (a) by adding “, for the purpose of preventing and suppressing a relevant offence” after “Corruption”;
 - (ii) by deleting paragraph (b) and substituting –
 - “(b) to any corresponding person or body, where the information appears to the Secretary for Justice to be likely to assist that person or body to discharge its functions relating to preventing and suppressing offences of a similar nature to relevant offences; and”.
- (d) In the proposed section 12G –
 - (i) by deleting subsection (1) and substituting –
 - “(1) Where it appears to the Court upon the oath of any person that there is reasonable cause to suspect that –

- (a) in any premises there is terrorist property; or
- (b) there is in any premises any thing that is, or contains, evidence of a relevant offence,

the Court may issue a warrant authorizing an authorized officer to enter the premises named in the warrant and there to search for and seize, remove and detain any terrorist property.

(1A) An authorized officer executing a warrant issued under subsection (1) may use such assistance and force as is reasonable and necessary for the purposes for which the warrant is issued.”;

- (ii) in subsection (2) by deleting “Any authorized officer” and substituting “An authorized officer who has entered any premises by virtue of a warrant issued under subsection (1)”.

- 14 (a) By renumbering the clause as clause 14(2).
- (b) By adding –
 - “(1) Section 18(2)(c) is amended by repealing “serious”.”.
- (c) In subclause (2) in the proposed section 18(2B)(a) by deleting “serious”.

New By adding –

“14A. Section added

The following is added –

“18A. Saving of common law remedies

(1) Subject to subsection (2), nothing in section 18 affects any remedy available to a person at common law.

(2) Where a court orders any compensation under section 18 or damages at common law in respect of any such default, the court shall take into account, in reduction of the amount of compensation or damages, any amount awarded as damages or ordered as compensation (as the case may be) in respect of that default.”.”.

Schedule,
section 1

In the proposed section 25A(9) –

- (a) in paragraph (a) by adding “, for the purpose of combating drug trafficking” after “Corruption”;
- (b) by deleting paragraph (b) and substituting –

“(b) by any authorized officer to the authorities or persons responsible for investigating or preventing drug trafficking, or handling the disclosure of knowledge or suspicion on property relating to drug trafficking, of any place outside Hong Kong which the authorized officer thinks fit, for the purpose of combating drug trafficking.”.

Schedule,
section 2

In the proposed section 25A(9) –

- (a) in paragraph (a) by adding “, for the purpose of combating crime” after “Corruption”;
- (b) by deleting paragraph (b) and substituting –
 - “(b) by any authorized officer to the authorities or persons responsible for investigating or preventing crime, or handling the disclosure of knowledge or suspicion on property relating to crime, of any place outside Hong Kong which the authorized officer thinks fit, for the purpose of combating crime.”.