

**Bills Committee on
United Nations (Anti-Terrorism Measures)(Amendment) Bill 2003**

Purpose

This paper addresses the issues raised by Members at the Bills Committee meeting on the United Nations (Anti-Terrorism Measures)(Amendment) Bill 2003 (the Bill) on 12 November 2003.

Section 11(2) of the United Nations (Anti-Terrorism Measures) Ordinance

2. Section 11(2) of the United Nations (Anti-Terrorism Measures) Ordinance (the Ordinance) (Cap. 575) provides that -

“A person shall not –

- (a) place any article or substance in any place; or
- (b) despatch any article or substance by post, rail or by any other means of sending things from one place to another,

with the intention of causing alarm to the public or a section of the public by a false belief that –

- (c) the article or substance is likely to explode or ignite and thereby cause personal injury or damage to property; or
- (d) the article contains or the substance consists of –

- (i) any dangerous, hazardous, radioactive or harmful substance;
- (ii) any toxic chemical; or
- (iii) any microbial or other biological agent, or toxin,

that is likely to cause death, disease or personal injury or damage to property.”

A person who commits a section 11(2) offence is liable on conviction on indictment to a fine and to imprisonment for 7 years, or, on summary conviction to a fine at level 6 and to imprisonment for one year.

3. Section 28 of the Public Order Ordinance (Cap. 245) and section 19 of the Summary Offences Ordinance (Cap. 228) cover offences of bomb hoaxes and possession of simulated bombs respectively, as follows

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Section 28 of Cap. 245

“Any person who –

- (a) places any article or substance in any place whatever; or
- (b) dispatches any article or substance by post, rail, sea, air or any other means whatever of sending things from one place to another,

with the intention of inducing some other person to believe that it is likely to explode or ignite and thereby cause personal injury or damage to property shall be guilty of an offence.

Any person guilty of an offence under this section shall be liable on conviction on indictment, to a fine of \$150,000 and to imprisonment for 5 years,” or, “on summary conviction to a fine of \$50,000 and to imprisonment for 3 years”.

Section 19 of Cap. 228

“A person who without lawful authority or reasonable excuse has in his possession, custody or control any simulated bomb shall be guilty of an offence and shall be liable on conviction to a fine of \$5,000 or to imprisonment for 1 year.”

4. Section 11(2) of Cap. 575 requires the offender to have the intention of causing alarm to the public or a section of the public by a false belief. It accordingly targets at more specific conduct than the other Ordinances which do not require that alarm be caused to the public. Section 28 of Cap. 245 only requires the offender to have the intention of inducing another person to believe that any article/substance will explode or ignite. Section 19 of Cap. 228 only criminalizes possession of simulated bombs.

5. Offences under section 11(2) of the Ordinance have, depending on the particular facts, the potential to be more serious than offences under the other Ordinances. Hence section 11(2) prescribes a greater penalty.

Whether the definition of “terrorist act” covers conduct proscribed by section 11

6. At the outset it should be borne in mind that the definition of “terrorist act” is included for the purposes of provisions in the Ordinance which either criminalize the financing etc. of terrorists or are directed towards freezing of terrorist property. There is no offence of committing a “terrorist act” under the Ordinance.

7. The offence provisions (see sections 7, 8 and 9) require the prosecution to prove that the perpetrator knew or had reasonable grounds to believe that the relevant person was a terrorist/terrorist associate. Clearly a conviction under section 11 will not, of itself, cause a person to know or have reasonable ground to believe that the convicted person was a terrorist/terrorist associate. Similar considerations apply in the case of provisions concerning the freezing of “terrorist property”.

8. In a particular situation all the facts will have to be looked at. A conviction under section 11 would be most unlikely, by itself, to result in the conclusion that the perpetrator was a terrorist.

Enforcement of the Ordinance

9. Information on the case prosecuted under the Ordinance has been provided in the two papers (CB(2)204/03-04(01) and CB(2)294/03-04(02)) submitted to the Bills Committee in October and November 2003 respectively.

Internal guidelines for enforcing the Ordinance

10. A Senior Government Counsel has been appointed as the Prosecution Policy Coordinator on Anti-Terrorism since November 2002, who is responsible for advising on all prosecutions under the Ordinance and reports directly to a Senior Assistant Director of Public Prosecutions. All advice on offences under the Ordinance is seen personally by the Director of Public Prosecutions. For investigation matters, a police officer of Superintendent rank is responsible for ensuring that all necessary aspects of investigation have been carried out.

Protection of interests of “innocent” parties

11. Subject to further discussion at the Bills Committee, we will consider the arguments for and the implications of making a special provision to protect the property rights of the “innocent” investors or financial institutions.

Definitions and offences in the Ordinance

12. Our response to issues raised in respect of the definitions and offences in the Ordinance has been set out in the paper (CB(2)294/03-04(01)) submitted to the Bills Committee in November 2003.

Security Bureau
November 2003