



I assent,

CUTHBERT M SEBASTIAN

*Governor-General.*

4<sup>th</sup> November 2005.

## SAINT CHRISTOPHER AND NEVIS

### No. 28 of 2005

AN ACT to amend the Anti-Terrorism Act, No. 21 of 2002.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the National Assembly of Saint Christopher and Nevis, and by the authority of the same as follows:

1. This Act may be cited as the Anti-Terrorism (Amendment) Act, 2005.

Short title.

2. The Anti-Terrorism Act, No. 21 of 2002 is amended in section 2 thereof by replacing the definition of the words "terrorist activity" occurring immediately after the definition of "terrorist", with the following new definition:

Amendment of section 2.

"terrorist act" means

- (1) An act or threat of action in or outside Saint Christopher and Nevis which
  - (a) involves serious bodily harm to a person;
  - (b) involves serious damage to property;
  - (c) endangers a person's life;
  - (d) creates a serious risk to the health or safety of the public or a section of the public;
  - (e) involves the use of firearms or explosives;
  - (f) involves releasing into the environment or any part thereof or disturbing or exposing the public or any part thereof to
    - (i) any dangerous, hazardous, radioactive or harmful substance;
    - (ii) any toxic chemical;

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- (iii) any microbial or other biological agent or toxin;
- (g) 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;
- (h) is designed or intended to disrupt the provision of essential emergency services such as police, civil defence or medical services;
- (i) involves prejudice to national security or public safety;

and is intended, or by its nature and context, may reasonably be regarded as being intended to

- (i) intimidate the public or a section of the public;
- (ii) compel a government or an international organization to do, or refrain from doing, any act, and
- (iii) is made for the purpose of advancing a political, ideological, or religious cause.

## (2) An act which

- (a) disrupts any services; and
- (b) is committed in pursuance of a protest, demonstration, or stoppage or work, shall be deemed not to be a terrorist act within the meaning of this definition, so long and so long only as the act is not intended to result in any harm referred to in paragraphs (a), (b), (c) or (d) of subsection (2).

## 3. The principal Act is amended

- (a) in section 11 by replacing the word “seven” with the word “ten”;
- (b) in sections 13 and 14 by replacing
  - (i) the words “six months” with the words “five years”;
  - (ii) the word “seven” with the words “one hundred and fifty”;
- (c) in section 15 by replacing
  - (i) the words “six months” with the words “ten years”;

Amendment of penalties and fines in sections 11, 13 and 14, 15, 19, 23, 25 and 29.

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- (ii) the word “seven” with the words “five hundred”;
- (d) in section 19 subsection (6) paragraph (b) by replacing the word “fifteen” with the word “five”;
- (e) in section 23 by replacing the word “ten” with the word “fifteen”;
- (f) in section 25 subsection (5) by
  - (i) replacing in paragraph (a) the words “ten years or to a fine or both”, with the words “a life sentence”; and
  - (ii) replacing in paragraph (b) thereof the words “six months” with the words “five years” and the words “seven thousand” with the words “seventy-five thousand” dollars;
- (g) in section 29 paragraph (b) by replacing the words “six months” with the words “two years” and the word “seven” with the word “ten”.

4. The principal Act is amended in sections 43 to 47 by substituting the following sections and adding a new section 47A:

Amendment of sections 43 to 47.

“Freezing of funds.

43. (1) Subject to subsection (4) the Court may, where it is satisfied on the application of the Director of Public Prosecutions that

- (a) a person has been charged or is about to be charged with an offence under this Act; or
- (b) a request has been made by a competent authority of a foreign State in accordance with section 103, in respect of a person
  - (i) about whom there are reasonable grounds for believing that the person has committed an offence specified in this Act; or
  - (ii) who has been charged or is about to be charged with an offence specified in this Act,

make an order freezing the funds in the possession of or under the control of that person.

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(2) An application for a freezing order may be made *ex parte* and be accompanied by an affidavit setting out

- (a) a description of the funds in respect of which the freezing order is sought;
- (b) the grounds for believing that the funds are related to or are used to facilitate an offence referred to in subsection (1);
- (c) the name and address of the person who is believed to be in possession or control of the funds;
- (d) where the person has not been charged, the offence for which he is charged.

(3) Where the court makes a freezing order under subsection (1), it shall require that the

- (a) applicant within twenty-one days of the making of the order, serve a notice of the order together with a copy thereof on every person named by the court;
- (b) order is published within the time and in the manner directed by the court; and
- (c) persons who appear to the court to have an interest in the funds are given an opportunity to be heard,

unless in respect of paragraph (a) the court is of the opinion that the giving of the notice will result in the disappearance, dissipation or reduction in the value of the funds.

(4) On the making of an order under subsection (1) the court may give directions regarding the disposal of the funds for the purpose of

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- (a) determining any dispute relating to the ownership of or other interest in the funds;
- (b) the proper administration of the funds during the period of the order;
- (c) the payment of the costs of the person referred to in subsection (1)
  - (i) for the reasonable subsistence of that person and his family;
  - (ii) to defend criminal proceedings against him; and
- (d) the payment of debts incurred in good faith prior to the making of the order.

(5) A freezing order made under this section shall cease to have effect six months after the order is made where the person in respect of whom the order was made has not been charged with an offence under this Act within that period.

(6) An order made under subsection (1) may be renewed for a period not exceeding six months in each particular case but in no case shall the entire period of the renewal exceed eighteen months.

(7) A freezing order granted by the court under this section shall not prejudice the rights of any third party acting in good faith in respect of the frozen assets or any interest therein.

(8) Where the application for a freezing order is made as a result of a request from another State the court shall only make the order if it is satisfied that reciprocal arrangements exist between Saint Christopher and Nevis and that other State in respect of similar freezing orders.

Undertakings  
by Crown.

44. (1) Before making an order under section 43, the Court may require the Crown to give such undertakings as the Court considers

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appropriate with respect to the payment of damages or costs, or both, in relation to the making and execution of the order.

(2) For the purposes of this section, the Director of Public Prosecutions may, after consultation with the Attorney-General, on behalf of the Crown, give to the court such undertakings with respect to the payment of damages or costs, or both, as are required by the court.

Exemption from liability.

45. (1) Where the court makes an order for the administration of frozen funds the person charged with the administration of the funds is not liable for

- (a) any damage or loss of the funds;
- (b) the cost of proceedings taken to establish a claim to the funds or to an interest therein,

unless the court in which the claim is made is of the opinion that the person is guilty of negligence in respect of the taking of custody, administration and control of the funds.

(2) Subsection (1) does not derogate from the criminal culpability of any person charged with the administration of funds referred to in that subsection.

Registration of freezing orders.

46. (1) A copy of a freezing order that affects registered land in Saint Christopher and Nevis shall be registered with the Registrar of Titles who shall record the particulars of the order in the Register Book of Titles and make a notation thereof on the Certificate of Title.

(2) A freezing order is of no effect with respect to registered land unless it is registered.

(3) Where particulars of a freezing order are registered as required by this section, a person who subsequently deals with the property concerned shall, for the purposes of section 40, be deemed to have notice of the order at the time of the dealing.

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(4) The registration of a freezing order under this section shall be exempt from the payment of fees under the Registration of Titles Act and stamp duty under the Stamp Act.

Contravention  
of freezing  
orders.

47. (1) A person who knowingly contravenes a freezing order by disposing of, or otherwise dealing with property that is subject to the freezing order commits an offence and is liable

- (a) on summary conviction in the case of
  - (i) an individual, to a fine not exceeding twenty thousand dollars and six months imprisonment; or
  - (ii) a body corporate, to a fine not exceeding one hundred and fifty thousand dollars;
- (b) on conviction on indictment in the case of
  - (i) an individual, to a fine of seventy-five thousand dollars and two years imprisonment; or
  - (ii) a body corporate to a fine of one hundred and fifty thousand dollars.

(2) Where a freezing order is made against property and

- (a) the property is disposed of or otherwise dealt with in contravention of the freezing order;
- (b) the disposition or dealing was not sufficient consideration or not in favour of a person who acted in good faith and without notice,

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the Director of Public Prosecutions may apply to the Court for an order that the disposition or dealing be set aside.

(3) The Court may, on the application of the Director of Public Prosecutions under subsection (2), set aside the disposition or dealing effective from the day

- (a) on which the disposition or dealing took place; or
- (b) the order is made under this subsection,

and declare the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place, and before the day of the order made under this subsection.

Review of  
freezing  
orders.

47A. (1) A person who has an interest in funds in respect of which a freezing order is made may, at any time, apply to the court for

- (a) an order under subsection (5);  
or
- (b) permission to examine the funds.

(2) An application under subsection (1) shall not be heard by the court unless the applicant has given the Director of Public Prosecutions not less than three days' notice in writing of the application.

(3) The court may require notice of the application to be given to, and may hear, any person who, in the opinion of the court, appears to have an interest in the property.

(4) Where an application is made under subsection (1) paragraph (a) in respect of any funds, the Court may act in accordance with subsection (5) after hearing the applicant, the Director of Public Prosecutions or any other person who is notified under subsection (3).

(5) For the purposes of subsection (4), the Court may order that the funds or any part thereof be returned to the applicant, or revoke the



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freezing order or vary it to exclude the funds or any interest therein or any part thereof from the application of the order, or make the order subject to such conditions as the Court thinks fit

- (a) if the applicant enters into a recognizance before the court, with or without sureties, in such amount and with such conditions, as the court directs, and where the court considers it appropriate, deposits with the court such sum of money or other valuable security as the court directs;
- (b) if the conditions referred to in subsection (6) are satisfied;
- (c) for the purpose of
  - (i) meeting the reasonable living expenses of the person who was in possession of the funds at the time the order was made or any person who, in the opinion of the Court, has an interest in the property and of the dependents of that person;
  - (ii) meeting the reasonable business or legal expenses of a person referred to in subparagraph (i).

(6) An order under subsection (5) in respect of funds may be made if the court is satisfied that

- (a) a freezing order should not have been made in respect of the funds;
- (b) the applicant is the lawful owner, or lawfully entitled to possession of the funds and

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appears innocent of any complicity in a terrorism offence or of any collusion in relation to such an offence; and

- (c) the funds will no longer be required for the purpose of any investigation or as evidence in any proceedings.

(7) Where an application is made to the Court under subsection (1)(b), the Court may order that the applicant be permitted to examine the funds subject to such terms as appear to the Court to be necessary or desirable to ensure that the funds are safeguarded for the purpose for which they may subsequently be required.”.

MARCELLA A LIBURD  
*Speaker*

Passed by the National Assembly this 28<sup>th</sup> day of October 2005.

JOSÉ LLOYD  
*Clerk of the National Assembly*