

Counter-Terrorism Legislation Bill

Government Bill

As reported from the Justice Committee

Commentary

Recommendation

The Justice Committee has examined the Counter-Terrorism Legislation Bill and recommends by majority that it be passed with the amendments shown. We recommend all amendments unanimously.

Introduction

The Counter-Terrorism Legislation Bill is an omnibus bill that would amend the Terrorism Suppression Act 2002, the Search and Surveillance Act 2012, and the Terrorism Suppression (Control Orders) Act 2019.

The bill aims to improve New Zealand's counter-terrorism legislation to enable the Government to better prevent and respond to terrorism and associated activities. In part, the bill would respond to the *Report of the Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques on 15 March 2019*. It seeks to implement part of recommendation 18 of that report, which suggests giving priority to considering the creation of precursor terrorism offences in the Terrorism Suppression Act.

The bill would create new offences to criminalise:

- travel to, from, or via New Zealand with the intention to carry out a terrorist act
- planning or preparation for a terrorist act
- weapons training or combat training for terrorist purposes.

It would also amend the definition of "terrorist act" by changing some of the purpose and intention elements. The bill would criminalise wider forms of material support for terrorist organisations than are currently provided for. It would also extend the existing control orders regime to provide that individuals who have completed a prison sentence for offences related to terrorism may be subject to the regime if they present a risk of engaging in terrorism-related activities.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. Some of us identified some issues relating to the following matters:

- the change in the definition of a terrorist act, from including “an intent to induce terror” in a population to “an intent to induce fear”
- a concern that legitimate aid may be prevented or discouraged by new provisions criminalising material support to terrorist entities or to be used in terrorist acts
- the extension of the current control order regime
- the extent of consultation during the pre-legislative process, particularly with Māori organisations or individuals.

We note that these matters have been addressed in advice provided by officials. We would like to draw the House’s attention to our recommended amendments relating to the first two points, which we discuss later in this report.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments. All major amendments we have recommended relate to the Terrorism Suppression Act.

Definition of “terrorist act”

Clause 6 would amend the definition of “terrorist act” in section 5 of the Terrorism Suppression Act. It would make a number of changes to the purpose and intention elements of the definition, including changing “terror” to “fear” in section 5(2)(a) of the Act.

We note that, for a person to be found to have carried out a terrorist act, the prosecution would have to prove they had demonstrated the following:

- intention to cause a serious outcome such as death or bodily injury
- a purpose of advancing an ideological, political, or religious cause
- intention to cause fear in a population or coerce or force a government or international organisation to do or abstain from doing any act.

We consider that the *mens rea* element requiring an intention to cause “fear” in a population may not be specific enough to create certainty about whether the threshold had been met. We recommend that clause 5 be amended to replace “induce fear” with “intimidate”. For this bill, we consider that “intimidate” would be more precise and would reflect the threshold provided in Canada, the UK, and Australia in relation to this element of a terrorist act. We also note that the definition of “terrorist act in armed conflict” in the principal Act refers to the purpose as being “to intimidate a population”.

Clarifying the offence of planning to commit a terrorist act

Clause 9 would introduce new section 6B into the principal Act to create a new offence of planning or preparing for a terrorist act. This new offence would carry a penalty of up to 7 years' imprisonment.

New section 6B(2) in the bill as introduced contains provisions that specify that the offence would not apply in cases where an individual planned (or made other preparations) to plan a terrorist act, to make a credible threat to carry one out, or to attempt to carry one out.

Some submitters expressed concern that it was not possible to prove whether someone was planning a terrorist act, or merely "planning to plan" one. They believe that explicitly providing for this exception could result in a defendant arguing that they were merely planning to plan a terrorist act. We consider that the courts would not accept a defence that was contrary to the legislative intent to create this offence. Nevertheless, we agree that new section 6B(2) in the bill as introduced would create an undesirable level of complexity.

Therefore, we recommend amending new section 6B to remove the provision that specifically excludes the "planning to plan" element from giving rise to criminal liability. That element arises because of the definition of "carrying out" in proposed new section 5A. The provision we recommend deleting is section 6B(2)(a) in the bill as introduced.

All other elements that preclude criminal liability would be retained. Under the bill, it would not be an offence to attempt to plan or prepare a terrorist act, or to make a credible threat to plan or prepare a terrorist act. Further, criminal liability would not arise for conspiracy or incitement to commit the section 6B offence.

Ensuring that the exemption for provision of basic needs is aligned with international obligations

Clause 10 would amend section 8 of the Terrorism Suppression Act relating to the financing of terrorism.

It would broaden the type of support that would be criminalised to include material support for terrorism. The Act currently only criminalises financial support.

It is important that criminalising material support for terrorism does not negatively affect the provision of legitimate aid and support for humanitarian purposes. The bill provides an exception for humanitarian aid by specifying that material support means support that does more than satisfy "essential human needs" and is provided "in good faith for genuine humanitarian reasons".

To provide certainty that humanitarian support would not be criminalised under this provision, we recommend that the bill be amended to replace "essential human needs" with "basic needs" throughout the Act. We also recommend that clause 5 be amended to insert a definition for "basic needs" that is consistent with the United Nations Security Council Resolution 1452.

This definition would provide examples of what constitutes a basic need, including, but not limited to, needs satisfied by cash, funds, property, or support for all or any of the following:

- foodstuffs
- rent or mortgage
- medicines or medical treatment
- taxes, insurance premiums, or public utility charges
- reasonable professional fees, and reimbursement of incurred expenses associated with the provision of legal services
- fees or service charges for routine holding or maintenance of frozen funds or other financial assets or economic resources.

We consider that inserting this definition, and changing references from “essential human needs” to “basic needs” throughout the Act would ensure that the legitimate provision of funds or material support for humanitarian purposes would not be captured by this offence. This would also remove the need for the judiciary to exercise discretion in determining whether support provided is “essential”, and align New Zealand with other jurisdictions.

Replacing “entity” with “designated terrorist entity”

Clause 13 would insert “material support” into section 10 of the Act. This would have the effect of criminalising the provision of funding and material support to designated terrorist entities. These entities are designated by either the United Nations or the Prime Minister.

In order to ensure that a person could not be held criminally liable for providing funds to entities that are not designated as terrorist entities by the United Nations or the Prime Minister, we recommend amending section 10(1) of the Act to explicitly state that the offence only applies when the entity is a designated terrorist entity.

Moving the humanitarian support exception to section 8

Given that sections 9(2) and 10(3) of the principal Act already contain exceptions for provision of essential human needs from the offences created by sections 9 and 10, we recommend moving our new recommended exception for basic needs, which would now only be relevant to section 8, to that section. We consider that this would align the exceptions for humanitarian support in section 8 with those in sections 9 and 10.

For clarity, we recommend amending clause 5 of the bill to change the definition of “material support”. Because an exception for humanitarian aid would be provided in our new section 8(5), it would not need to be provided in the definition of “material support”. We also recommend inserting new paragraph (c) into the definition to make it clear that, for the purposes of section 8, “material support” excludes support specified in section 8(5).

Providing a definition for “New Zealand”

Clause 16 would insert new section 13F into the Act and introduce a new offence for travelling to, from, or via New Zealand with the intention to commit a terrorist offence. This new offence would have a penalty ranging from 3.5 years’ imprisonment to 10 years, depending on the terrorist offence the person intends to commit.

We note that someone travelling with the intention to commit a terrorist offence who sailed through New Zealand’s territorial sea and stayed on the same ship is intended to be caught by the provisions in the bill as introduced. However, some submitters considered that there was a risk that these individuals would not be caught by these provisions if the situation was not explicitly provided for. To ensure clarity, we recommend that clause 5 be amended to insert a definition for “New Zealand” in the interpretation section of the Act. This definition would provide that “New Zealand” includes the outer limits of the territorial sea of New Zealand. This would make the Act self-contained. It would also align the Act with the Crimes Act 1961, which contains provisions regarding territorial application that are mentioned in section 14(2) of the principal Act.

ACT New Zealand differing view

The ACT Party opposes the passage of this bill due to the process adopted by the Government to progress it.

The world we live in today is one where new threats are emerging and it is important that we have robust legislative frameworks in place to manage those threats. But the nature of counter-terrorism legislation is that it will regularly ask parliaments to trade off provisions intended to increase security of the public against the freedoms and rights of the very people we are trying to protect.

There are few, if any, areas of law making where the stakes are as high when it comes to the security and freedoms of people. For that reason, it is critical that Parliament gets these provisions right and takes the time to do so.

The substantive issues this bill seeks to address are worthy policy concerns that do need the consideration of Parliament. Therefore, the ACT Party supported the first reading of the bill. The select committee had only just finished hearing from submitters, were still deliberating on the concerns raised around the wording of current provisions, and considering amendments.

Indeed, good progress was being, and had been made in addressing the substantive concerns raised by submitters. The ACT Party very well could have supported the passage of this bill had the due process been followed.

The ACT Party also proposed that, in the event there was a pressing need to advance certain parts of this bill considering the Lynn Mall terror attack, we would have supported a streamlined process where specific parts of the bill were advanced to fix current gaps more deliberately in the framework.

But we do not believe it to be reasonable to advance wholesale rewrites of counter-terrorism legislation which go beyond specific events or identified gaps as a reaction.

It was reasonable that the Government took the time to develop other legislation following the Christchurch terror attack in 2019 because time was needed to ensure Parliament got things right.

However, there are examples where urgent legislation is justified. For example, the Government passed the Child Protection (Child Sex Offender Government Agency Registration) Amendment Act 2021 to ensure public safety at the point that an imminent problem was to emerge. Importantly, this legislation was narrow in scope, sought to solve a well-defined problem, and had significant time sensitivities to it.

In the case of the current law, the bill is vast in scope, seeks to solve several problems that a variety of concerns raised (though we accept progress has been made to resolve a number of these), and as far as has been publicly litigated does not have an immediate time sensitivity.

All lawmakers should take an interest in law that seeks to widen the power of the state and ensure that it is being used well. Rushing progress, despite the significant concerns raised by submitters, risks gaps being left and exploited, the trade-off between security and freedoms being unbalanced, and executive overreach being permitted.

The risk is always that if provisions are not used well or are ill defined, people who are not intended to be affected by these provisions end up being harmed by them. Concerns have rightly been raised around the history of our approach to security towards certain communities. Similar concerns have been raised through the committee process at the potential to lower the bar for what criminal behaviour is and whether this is a credible barometer for a threat of terrorism.

Unfortunately, the conduct of certain political parties in attempting to rush this legislation provides little confidence that those parties have an interest in acting responsibly towards balancing liberty and security and are more interested in perception over pragmatism.

We need to have a fulsome debate that addresses concerns such as these and clearly defines the types of problems this bill is seeking to solve. We must make sure that we get this right.

ACT commends the work of submitters in raising robust concerns in their submissions and officials who have worked hard to deliver workable solutions to date. But the ACT Party cannot, unfortunately, support the progress of this bill at this stage.

Green Party of Aotearoa New Zealand differing view

The Green Party opposes this bill. We echo the concerns of the majority of submitters who detailed substantive failures of the bill to protect and abide by fundamental human rights protections as well as the rule of law. We further note and agree with the many submitters who felt adequate consultation has not taken place. This is deeply concerning given the pace at which this legislation is now progressing and the implications, in particular for Te Tiriti o Waitangi.

Three key concerns for the Green Party are the expansion of the definition of terrorism, the new planning or preparation offence, and the application of the control order regime to people convicted in New Zealand.

Firstly, we remain deeply concerned that the legislative definition adopted by the bill risks capturing direct action, activism, and protest. We note that constructive engagement by the committee on the definition of terror has led to adopting the standard of “intimidation” rather than “fear”. We commend this change, which brings the bill further in line with international standards and domestic criminal law. However, this does not fully alleviate our, or key submitters’, concerns.

Secondly, the new planning or preparation offence has been characterised by some experts as “thought crime”, difficult to define in practice or defend against in legal proceedings. The warrantless search and seizure powers that sit with this new offence make the risks for human rights abuses even more significant.

Finally, the terrorism control order regime is being expanded to people convicted in New Zealand, when the whole premise of this regime was supposed to be about a difficulty in gathering evidence to prosecute foreign fighters returning to New Zealand.

Many aspects of this bill have a serious impact on human rights and well-understood legal principles, especially where they pertain to preparatory offences and double jeopardy. The committee have not recommended substantial changes to these sections that would remedy these breaches.

While it is suggested that the erosion of rights is justifiable because of the harm terrorism causes and the public interest in safety, we would like to reiterate the concerns of many submitters that the erosion of these rights affects all New Zealanders. We do not consider the right balance has been struck. In particular, as the New Zealand Law Society made clear, even Crown Law’s own advice suggests avenues for legal change that would not impede on the rule against double jeopardy. It is unacceptable for the Government to persist with the bill in its current form when a rights affirming measure is available to achieve its purported purpose.

Counter-terrorism legislation must include adequate human rights protections. Without these, the broad powers this bill confers on agencies may lead to the disproportionate surveillance and criminalisation of Māori or other marginalised communities due to existing biases. This in turn undermines social cohesion, potentially leading to radicalisation, which is exactly the type of environment those carrying out terrorist acts aim to create.

This bill, passed urgently in the wake of a terrorist attack, may convey to the public that they should feel safer, but the Government has not been able to clearly demonstrate why this new law is needed, or how its particular provisions would effectively protect New Zealanders against radicalisation or violent terror. The bill will remove human rights and potentially put at risk communities that have been the subject of disproportionate law enforcement action, and therefore the Green Party will continue to oppose it.

Appendix

Committee process

The Counter-Terrorism Legislation Bill was referred to the Justice Committee on 5 May 2021. The closing date for submissions on the bill was 25 June 2021. We received and considered 81 submissions from interested groups and individuals. We heard oral evidence from 22 submitters.

We received advice on the bill from the Ministry of Justice and the Ministry of Foreign Affairs and Trade. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Ginny Andersen (Chairperson)

Hon Simon Bridges

Simeon Brown

Dr Emily Henderson

Harete Hipango (until 31 August 2021)

Nicole McKee

Hon Mark Mitchell (from 31 August 2021)

Willow-Jean Prime

Vanushi Walters

Arena Williams

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Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Kris Faafoi

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Counter-Terrorism Legislation Act **2021**.

2 Commencement

This Act comes into force on the day after the date of Royal assent.

5

Part 1 Amendments to Terrorism Suppression Act 2002

Principal Act

3 **Principal Act**

This **Part** amends the Terrorism Suppression Act 2002 (the **principal Act**). 5

Purpose

4 **Section 3 amended (Purpose of this Act)**

(1) After section 3(b)(vi), insert:

(vii) Resolution 2178 (2014); and

(2) Replace section 3(c) with: 10

(c) to make further provision to implement, in part,—

(i) the ISIL (Da'esh) and Al-Qaida Sanctions Resolutions; and

(ii) the Taliban Sanctions Resolutions.

Definitions and transitional, savings, and related provisions

5 **Section 4 amended (Interpretation)** 15

(1) In section 4(1), repeal the definitions of **Al-Qaida and the Taliban Sanctions Resolutions** and **Al-Qaida entity**, and insert in its appropriate alphabetical order:

Al-Qaida entity, for a measure that is set out, or referred to, in 1 or more ISIL (Da'esh) and Al-Qaida Sanctions Resolutions, and that is provided for in this Act, means Al-Qaida, or an entity that is not Al-Qaida but is designated, by or under those resolutions, as an entity that is— 20

(a) associated with Al-Qaida; and

(b) an entity to which that measure is to be applied

(1A) In section 4(1), insert in its appropriate alphabetical order: 25

basic needs include, without limitation, needs satisfied by cash, funds, property, or support for all or any of the following:

(a) foodstuffs:

(b) rent or mortgage:

(c) medicines or medical treatment: 30

(d) taxes, insurance premiums, or public utility charges:

(e) reasonable professional fees, and reimbursement of incurred expenses, associated with the provision of legal services:

- (f) fees or service charges for routine holding or maintenance of frozen funds or other financial assets or economic resources
- (2) In section 4(1), replace the definition of **carried out** with:
carried out, in relation to a terrorist act,—
- (a) has the meaning given to it in **section 5A(1)**; but 5
- (b) in section 6A(1), has, despite **section 5A(1)**, only the narrower meaning given to it in **section 6A(2)**
- (3) In section 4(1), insert in its appropriate alphabetical order:
critical infrastructure means all or any of the following that provide the essential services of a population: 10
- (a) assets:
- (b) facilities:
- (c) networks:
- (d) systems
- (4) In section 4(1), repeal the definition of **facility** and **financial institution**, and the definition of **suspicious transaction report**, and insert in their appropriate alphabetical order: 15
- facility** has the meaning referred to in **section 44(5)**
- reporting entity** has the meaning referred to in **section 44(5)**
- service** has the meaning referred to in **section 44(5)** 20
- suspicious activity report** has the meaning referred to in **section 44(5)**
- (5) In section 4(1), definition of **financing of terrorism**, after “**financing of**”, insert “, or **provision of material support for**”.
- (6) In section 4(1), definition of **financing of terrorism**, paragraph (a), replace “section 8(1) or (2A)” with “**section 8(1), (1A), (2A), or (2B)**”. 25
- (7) In section 4(1), insert in their appropriate alphabetical order:
- ISIL (Da’esh)** means the splinter group of Al-Qaida known as the Islamic State in Iraq and the Levant (ISIL), also known as the Islamic State in Iraq and al Sham (ISIS), and also known as Da’esh
- ISIL (Da’esh) and Al-Qaida Sanctions Resolutions** means Resolution 1267 30
(1999) of the Security Council of the United Nations, adopted under Chapter VII of the United Nations Charter on 15 October 1999 and its successor resolutions, including, without limitation,—
- (a) Resolution 1333 (2000) adopted on 19 December 2000; and
- (b) Resolution 1390 (2002) adopted on 16 January 2002; and 35
- (c) Resolution 1989 (2011) adopted on 17 June 2011; and
- (d) Resolution 2170 (2014) adopted on 15 August 2014; and

- (e) Resolution 2253 (2015) adopted on 17 December 2015
- ISIL (Da'esh) entity**, for a measure that is set out, or referred to, in 1 or more ISIL (Da'esh) and Al-Qaida Sanctions Resolutions, and that is provided for in this Act, means ISIL (Da'esh), or an entity that is not ISIL (Da'esh) but is designated, by or under those resolutions, as an entity that is— 5
- (a) associated with ISIL (Da'esh); and
- (b) an entity to which that measure is to be applied
- (8) In section 4(1), insert in their appropriate alphabetical order:
- material support**—
- (a) ~~means support that—~~ 10
- (i) ~~does, or may, assist in, contribute to, or make easier, the carrying out of 1 or more terrorist acts; and therefore~~
- (ii) ~~does, or may do, more than only satisfy essential human needs of those to whom, or for whose benefit, it is provided—~~
- (A) ~~in good faith for genuine humanitarian reasons; and~~ 15
- (B) ~~impartially or neutrally as between people who have those needs; and~~
- (a) means support that does, or may, assist in, contribute to, or make easier, the carrying out of 1 or more terrorist acts; and
- (b) includes, without limiting the generality of **paragraph (a)**, support that complies with that paragraph and that is all or any of the following: 20
- (i) advice given in making available financial or related services, or financial or related services:
- (ii) other advice, or other services, derived from acquired skills or knowledge (for example, agency, brokerage, translation, driving or pilotage, or training to impart skills): 25
- (iii) equipment, information, technology, or other property or resources (for example, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, or personnel (the assistance or efforts of 1 or more individuals who may be or include oneself)): 30
- (iv) accommodation, lodging, stockpiling, or storage:
- (v) transportation; but
- (c) for the purposes of **section 8** and of any other legislation that mentions **section 8**, excludes (despite **paragraphs (a) and (b)** of this definition) support specified in **section 8(5)** 35
- New Zealand includes all waters within the outer limits of the territorial sea of New Zealand (as defined by section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977)

- Resolution 2178 (2014)** means Resolution 2178 (2014) of the Security Council of the United Nations, adopted under Chapter VII of the United Nations Charter on 24 September 2014, a copy of which is set out in **Schedule 4D**
- (9) In section 4(1), repeal the definitions of **Taliban entity** and **United Nations listed terrorist entity**, and insert in their appropriate alphabetical order: 5
- Taliban entity**, for a measure that is set out, or referred to, in 1 or more Taliban Sanctions Resolutions, and that is provided for in this Act, means an entity that—
- (a) is not Al-Qaida, an Al-Qaida entity, or the Taliban; but
- (b) is designated, by or under those resolutions, as an entity to which that measure is to be applied 10
- Taliban Sanctions Resolutions** means Resolution 1267 (1999) of the Security Council of the United Nations, adopted under Chapter VII of the United Nations Charter on 15 October 1999, and its successor resolutions, including, without limitation,— 15
- (a) Resolution 1333 (2000) adopted on 19 December 2000; and
- (b) Resolution 1390 (2002) adopted on 16 January 2002; and
- (c) Resolution 1988 (2011) adopted on 17 June 2011
- United Nations listed terrorist entity** means an entity that is— 20
- (a) Al-Qaida
- (b) an Al-Qaida entity; or
- (c) the Taliban; or
- (d) a Taliban entity; or
- (e) ISIL (Da’esh); or
- (f) an ISIL (Da’esh) entity 25
- 6 Section 5 amended (Terrorist act defined)**
- (1) In section 5(2), replace “the purpose of” with “1 or more purposes that are or include”.
- (2) In section 5(2)(a), replace “induce terror in a civilian population” with “fear in intimidate a population”. 30
- (3) In section 5(2)(b), replace “unduly compel” with “coerce”.
- (4) In section 5(3)(d), replace “an infrastructure facility” with “critical infrastructure”.
- (5) In section 5(3)(e), replace “devastate” with “cause major damage to”.
- 7 New sections 5A and 5B inserted** 35
- After section 5, insert:

5A Carrying out and facilitating terrorist acts

Carrying out includes preparations, credible threats, and attempts

(1) For the purposes of this Act, a terrorist act is **carried out** if any 1 or more of the following occurs:

- (a) planning or other preparations to carry out the act, whether it is actually carried out or not: 5
- (b) a credible threat to carry out the act, whether it is actually carried out or not:
- (c) an attempt to carry out the act:
- (d) the carrying out of the act. 10

Facilitation requires some actual knowledge

(2) For the purposes of this Act, a terrorist act is **facilitated** only if the facilitator knows that a terrorist act is facilitated, but this does not require that—

- (a) the facilitator knows that any specific terrorist act is facilitated:
- (b) any specific terrorist act was foreseen or planned at the time it was facilitated: 15
- (c) any terrorist act was actually carried out.

5B Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms. 20

*Terrorist act***8 Section 6A amended (Terrorist act)**

(1) Replace the heading to section 6A with “**Terrorist act: credible threat, attempt, and carrying out**”.

(2) Before section 6A(1), insert: 25

Offence

(3) In section 6A(1), replace “who engages in” with “if the person carries out”.

(4) Replace section 6A(2) with:

Meaning, in subsection (1), of carried out

(2) In subsection (1), **carried out**, in relation to a terrorist act, has, despite **section 5A(1)**, only the meaning given in **section 5A(1)(b), (c), and (d)**. 30

Effect of subsection (1) applying to attempt

(3) However, subsection (1) applying to an attempt to carry out the act (within the meaning of **section 5A(1)(c)**) means only that the person may under section 72 of the Crimes Act 1961 be guilty of an attempt to commit the offence in 35

that subsection as it applies to the carrying out of the act (within the meaning of **section 5A(1)(d)**).

Penalty

- (4) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for life or a lesser term. 5
- (5) A person who attempts to commit the offence in subsection (1) as it applies to the carrying out of the act (within the meaning of **section 5A(1)(d)**) is under section 311(1) of the Crimes Act 1961 liable to imprisonment for a term not exceeding 10 years.

9 New section 6B inserted (Terrorist act: planning or other preparations to carry out) 10

After section 6A, insert:

6B Terrorist act: planning or other preparations to carry out

Offence

- (1) A person commits an offence if — 15
- (a) ~~the person carries out a terrorist act (within the meaning of **section 5A(1)(a)**) by planning or other preparations to carry out the act, whether it is actually carried out or not; and~~
- (b) ~~the planning done is, or other preparations made are, for the purposes of section 72(2) of the Crimes Act 1961, only preparation for the commission of, and too remote to constitute an attempt to commit, an offence against section 6A(1).~~ 20
- (2) **Subsection (1)** does not apply to planning or other preparations to —
- (a) ~~plan or make other preparations to carry out the act, whether it is actually carried out or not; or~~ 25
- (b) ~~make a credible threat to carry out the act, whether it is actually carried out or not; or~~
- (c) ~~attempt to carry out the act.~~
- (1) A person commits an offence if the person carries out a terrorist act (within the meaning of **section 5A(1)(a)**) by planning or other preparations to carry out the act, whether it is actually carried out or not. 30
- (2) **Subsection (1)** applies only to planning done that is, or to other preparations made that are, —
- (a) not carrying out a terrorist act within the meaning given in **section 5A(1)(b), (c), and (d)**; and 35
- (b) for the purposes of section 72(2) of the Crimes Act 1961, too remote to constitute an attempt to commit an offence against section 6A(1).
- (3) In a prosecution for an offence against **subsection (1)**, the prosecutor—

- (a) must prove that the planning done is, or the other preparations made are, for an act that is, or if it were actually carried out would be, a terrorist act as defined in section 5(1)(a), (b), or (c); and
- (b) in particular, if that act falls within section 5(2) (in a case to which section 5(1)(a) applies), must prove the intention and purpose elements in section 5(2) and (3); but
- (c) in a case to which section 5(1)(a), (b), or (c) applies, need not prove a specific target, location, date, or time for that act.

Penalty

- (4) A person who commits an offence against **subsection (1)** is liable on conviction to imprisonment for a term not exceeding 7 years.

Conspiring to commit offence, and attempt to commit or procure commission

- (5) Sections 72, 310, and 311 of the Crimes Act 1961 do not apply to an offence against **subsection (1)**.

Financing of, or provision of material support for, terrorism 15

10 Section 8 amended (Financing of terrorism)

- (1) In the heading to section 8, after “**Financing of**”, insert “, or **provision of material support for**”.
- (2) Replace section 8(1) to (4) with:

Wilful provision or collection of funds for use to carry out terrorist acts 20

- (1) A person commits an offence if the person provides or collects funds—
 - (a) directly or indirectly; and
 - (b) wilfully; and
 - (c) without lawful justification or reasonable excuse; and
 - (d) intending that the funds be used, or knowing that, or being reckless about whether, they will be used, in full or in part, in order to carry out 1 or more acts of a kind that, if they were carried out, would be 1 or more terrorist acts.

Wilful provision of material support for use to carry out terrorist acts

- (1A) A person commits an offence if the person provides material support—
 - (a) directly or indirectly; and
 - (b) wilfully; and
 - (c) without lawful justification or reasonable excuse; and
 - (d) intending that the support be used, or knowing that, or being reckless about whether, it is to be used, in full or in part, in order to carry out 1 or more acts of a kind that, if they were carried out, would be 1 or more terrorist acts.

Wilful provision or collection of funds for use by entity known to carry out or participate in carrying out of terrorist acts

- (2A) A person commits an offence if the person provides or collects funds—
- (a) directly or indirectly; and
 - (b) wilfully; and
 - (c) without lawful justification or reasonable excuse; and
 - (d) intending that the funds be used, or knowing that, or being reckless about whether, they will be used, by an entity that the person knows is an entity that carries out, or participates in the carrying out of, 1 or more terrorist acts.

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Wilful provision of material support for use by entity known to carry out or participate in carrying out of terrorist acts

- (2B) A person commits an offence if the person provides material support—
- (a) directly or indirectly; and
 - (b) wilfully; and
 - (c) without lawful justification or reasonable excuse; and
 - (d) intending that the material support be used, or knowing that, or being reckless about whether, it will be used, by an entity that the person knows is an entity that carries out, or participates in the carrying out of, 1 or more terrorist acts.

15

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Funds or material support need not be used to carry out terrorist act

- (3) In a prosecution for financing of, or provision of material support for, terrorism, it is not necessary for the prosecutor to prove that the funds or material support collected or provided were or was actually used, in full or in part, to carry out a terrorist act.

25

Penalty

- (4) A person who commits financing of, or provision of material support for, terrorism is liable on conviction to imprisonment for a term not exceeding—
- (a) 14 years, if the mental element under **subsection (1)(d), (1A)(d), (2A)(d), or (2B)(d)** is intention;
 - (b) 10 years, if the mental element under **subsection (1)(d), (1A)(d), (2A)(d), or (2B)(d)** is knowledge or recklessness.

30

Material support excludes humanitarian support to satisfy basic needs

- (5) For the purposes of this section and of any other legislation that mentions this section, material support excludes, despite paragraphs (a) and (b) of the definition of that term in section 4(1), support that does, or may do, no more than provide support necessary to satisfy basic needs of those to whom, or for whose benefit, it is provided—

35

- (a) in good faith for genuine humanitarian reasons; and

(b) impartially or neutrally as between people who have those needs.

Dealing with property

11 Section 9 amended (Prohibition on dealing with property of, or derived or generated from property of, designated terrorist entity)

- (1) In section 9(2), replace “those provisions” with “subsection (1)”. 5
- (1A) In section 9(2)(a), replace “essential human needs” with “basic needs”.
- (2) In section 9(2)(b), replace “financial institution” with “reporting entity”.

Making property, or material support, available

12 Cross-heading above section 10 amended

In the cross-heading above section 10, replace “*financial or related services,*” 10
with “*material support,*”.

13 Section 10 amended (Prohibition on making property, or financial or related services, available to designated terrorist entity)

- (1) In the heading to section 10, replace “**financial or related services,**” with 15
“**material support,**”.
- (2) Replace section 10(1) with:
- (1) A person commits an offence if the person makes available, or causes to be 20
made available, to, or for the benefit of, ~~an~~ a designated terrorist entity, any
property, or any material support,—
- (a) directly or indirectly; and 20
- (b) without lawful justification or reasonable excuse; and
- (c) knowing that, or being reckless about whether, the entity is a designated
terrorist entity.

(2A) In section 10(3), replace “essential human needs” with “basic needs”.

- (3) In section 10(4), replace “services” with “support”. 25
- (4) In section 10(5), replace “7 years” with “10 years”.
- (5) In section 10(6), replace “services” with “support” in each place.

14 Cross-heading above section 11 amended

In the cross-heading above section 11, replace “*financial or related services,*” 30
with “*material support,*”.

Weapons training or combat training for terrorist purposes

15 New section 13AA and cross-heading inserted

After section 13, insert:

*Weapons training or combat training for terrorist purposes***13AA Providing or receiving weapons training or combat training for terrorist purposes***Offence*

- (1) A person commits an offence if the person— 5
- (a) provides or receives weapons training or combat training; and
 - (b) knows that the training is provided or received for purposes that are or include 1 or both of the following purposes:
 - (i) to carry out 1 or more terrorist acts (whether any or all of them are actually carried out or not): 10
 - (ii) to enhance the ability of any entity to carry out, or to participate in the carrying out of, 1 or more terrorist acts (whether any or all of them are actually carried out or not).
- (2) In a prosecution for an offence against **subsection (1)**, the prosecutor need not prove a specific target, location, date, or time for the 1 or more terrorist acts referred to in **subsection (1)(b)(i) or (ii)**. 15

Penalty

- (3) A person who commits an offence against **subsection (1)** is liable on conviction to imprisonment for a term not exceeding 7 years.

Travelling 20**16 New section 13F and cross-heading inserted**

After section 13E, insert:

*Travelling intending to commit specified offence***13F Travelling intending to commit specified offence***Offence* 25

- (1) A person commits an offence if the person—
- (a) travels (by any means) to, from, or via New Zealand; and
 - (b) does so intending to do anything that, if done wholly in New Zealand, would be a specified offence.
- (2) For the purposes of **subsection (1)**, and without limiting the generality of that subsection, a person is taken to have travelled to, from, or via New Zealand if the person,— 30
- (a) for the purpose of arriving in, or travelling via, New Zealand,—
 - (i) disembarks from a craft through a Customs place; or

| | |
|---|---------------------|
| <ul style="list-style-type: none"> (ii) disembarks from a craft and reports to a Customs officer, to a Police station, or to any other place as directed by a Customs officer; or (b) for the purpose of departing from New Zealand,— <ul style="list-style-type: none"> (i) goes towards a craft through a Customs place; or (ii) goes towards a craft as otherwise authorised by the chief executive of the New Zealand Customs Service, a Customs officer, the Customs and Excise Act 2018, or regulations made under that Act. | <p>5</p> |
| <i>Travel to, from, or via New Zealand</i> | |
| <p>(2) <u>A person is taken to have travelled to New Zealand, for the purposes of subsection (1), if the person, for the purpose of arriving in New Zealand,—</u></p> <ul style="list-style-type: none"> (a) <u>disembarks from a craft through a Customs place; or</u> (b) <u>disembarks from a craft and reports to a Customs officer, to a Police station, or to any other place as directed by a Customs officer.</u> | <p>10</p> <p>15</p> |
| <p>(2A) <u>A person is taken to have travelled from New Zealand, for the purposes of subsection (1) (see also subsection (4)(a)), if the person, for the purpose of departing from New Zealand,—</u></p> <ul style="list-style-type: none"> (a) <u>goes towards a craft through a Customs place; or</u> (b) <u>goes towards a craft as otherwise authorised by the chief executive of the New Zealand Customs Service, a Customs officer, the Customs and Excise Act 2018, or regulations made under that Act.</u> | <p>20</p> |
| <p>(2B) <u>A person is taken to have travelled via New Zealand, for the purposes of subsection (1) (see also subsection (4)(a)), if the person, for the purpose of travelling via New Zealand,—</u></p> <ul style="list-style-type: none"> (a) <u>disembarks from a craft through a Customs place; or</u> (b) <u>disembarks from a craft and reports to a Customs officer, to a Police station, or to any other place as directed by a Customs officer.</u> | <p>25</p> |
| <p>(2C) Subsections (2) to (2B) do not affect or limit—</p> <ul style="list-style-type: none"> (a) <u>the generality of subsection (1) or (4)(a); or</u> (b) <u>a prosecutor proving, without relying on subsection (2), (2A), or (2B), that a person has travelled to, from, or via New Zealand.</u> | <p>30</p> |
| <p>(2D) <u>In subsections (2) to (2B), Customs officer and Customs place have the meanings given to them in section 5(1) of the Customs and Excise Act 2018.</u></p> <p><i>Specified offence</i></p> | <p>35</p> |
| <p>(3) In this section, specified offence means an offence against all or any of the following:</p> <ul style="list-style-type: none"> (a) section 6A (terrorist act: credible threat and carrying out (but excluding an attempt)): | |

| | | |
|-----|--|----|
| (b) | section 6B (terrorist act: planning or other preparations to carry out): | |
| (c) | section 7 (terrorist bombing): | |
| (d) | section 8 (financing of, or provision of material support for, terrorism): | |
| (e) | section 9 (prohibition on dealing with property of, or derived or generated from property of, designated terrorist entity): | 5 |
| (f) | section 10 (prohibition on making property, or material support, available to designated terrorist entity): | |
| (g) | section 12 (recruiting members of terrorist groups): | |
| (h) | section 13 (participating in terrorist groups): | |
| (i) | section 13AA (providing or receiving weapons training or combat training for terrorist purposes): | 10 |
| (j) | section 13A (harbouring or concealing terrorists): | |
| (k) | section 13B (offences involving use and movement of unmarked plastic explosives): | |
| (l) | section 13C (offences involving physical protection of nuclear material): | 15 |
| (m) | section 13D (importation, acquisition, etc, of radioactive material): | |
| (n) | section 13E (offences involving radioactive material and radioactive devices). | |
| | <i>Application of offence</i> | |
| (4) | Subsection (1) applies regardless of whether— | 20 |
| (a) | the person, if travelling from, or via, New Zealand, departs from their original location, or reaches their intended ultimate destination: | |
| (b) | the person has the intention mentioned in subsection (1)(b) at any time or times, or at all times, during the travel concerned: | |
| (c) | the person intends to do wholly or in part in New Zealand, or wholly outside New Zealand, the thing that, if done in New Zealand, would be a specified offence: | 25 |
| (d) | the person does the thing that, if done wholly in New Zealand, would be a specified offence. | |
| | <i>Penalty</i> | 30 |
| (5) | A person who commits an offence against subsection (1) is liable on conviction to the highest of the applicable maximum penalties specified in Schedule 4E . | |
| | Compare: 1961 No 43 s 311(1); Anti-Money Laundering and Counter Terrorism Financing Act 2006 (Aust) s 57(3) | 35 |

Extraterritorial jurisdiction

- 17 Section 14 amended (Offences also apply in certain cases outside New Zealand)**
- (1) In section 14(1), replace “sections 7 to 13 and 13B to 13E” with “sections 6A to **13F**”. 5
- (2) In section 14(2), replace “sections 7 to 13” with “sections 6A to **13F**”.
- 18 Section 15 amended (Offences apply to acts outside New Zealand by New Zealand citizens or on New Zealand aircraft and ships)**
- In section 15(d)(ii), after “required”, insert “or entitled”.
- 19 Section 17 amended (Further acts outside New Zealand to which financing of terrorism applies)** 10
- (1) In the heading to section 17, after “**financing of**”, insert “, or provision of material support for,”.
- (2) In section 17,—
- (a) after “financing of”, insert “, or provision of material support for,”; and 15
- (b) replace “done” with “carried out (as defined in sections 4(1) and **5A(1)**)”.
- 20 Section 18 amended (Offences also apply to acts outside New Zealand if alleged offender is in New Zealand and is not extradited)**
- (1) In section 18, replace “terrorist bombing, financing of terrorism, a nuclear terrorism offence, or a nuclear material offence” with “a specified offence”. 20
- (2) In section 18, insert as subsection (2):
- (2) In this section, a **specified offence**, means an offence that is—
- (a) terrorist bombing; or
- (b) financing of, or provision of material support for, terrorism; or 25
- (c) a nuclear terrorism offence; or
- (d) a nuclear material offence.

Further provisions relating to interim and final designations

- 21 Section 25 repealed (Carrying out and facilitating terrorist acts)**
- Repeal section 25. 30
- 22 Section 28 amended (Further notification of making of designation)**
- In section 28(2)(b), replace “services” with “support”.

*Review, revocation, and expiry of designations***23 Section 34 amended (Revocation of designations)**

In section 34(2)(b), replace “services” with “support”.

*Duty to report suspicions relating to property***24 Section 43 amended (Suspicions that property owned or controlled by designated terrorist entities to be reported) 5**

(1) In section 43(2), replace “financial institution” with “reporting entity” in each place.

(2) In section 43(5), replace “**financial institution**” with “**reporting entity**”.

25 Section 44 amended (Nature of suspicious property report) 10

(1) In section 44(1)(b), delete—

(a) “a financial institution or by”; and

(b) “the financial institution or”.

(2) In section 44(1)(d)(ii), replace “the financial institution or reporting entity, as the case may be,” with “the reporting entity”. 15

(3) In section 44(2), delete “the financial institution or”.

(4) In section 44(4),—

(a) delete “financial institution or” in each place; and

(b) after “a transaction”, insert “or a service”; and

(c) after “the transaction or proposed transaction”, insert “or service or proposed service”. 20

(5) Replace section 44(5) with:

(5) In this section, section 47, and Schedule 5,—

(a) **facility, reporting entity, suspicious activity report, and transaction** have the meanings given to them in section 5 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009; and 25

(b) **service** has the meaning given to it in section 39A of that Act.

26 Section 47 amended (Protection of identity of persons making reports)

In section 47(1)(b)(i), delete “financial institution or”.

*Customs’ powers in relation to certain property 30***27 Section 47A amended (Detention of goods suspected to be terrorist property)**

(1) In section 47A(1)(a)(ia), replace “; or” with “; and”.

(2) Repeal section 47A(1)(a)(ii).

27A Section 47B amended (Return of cash necessary to satisfy essential human needs)

- (1) In the heading to section 47B, replace “essential human needs” with “basic needs”.
- (2) In section 47B(1), replace “essential human needs” with “basic needs”. 5

28 Section 47C amended (Further provisions about detention under section 47A)

Repeal section 47C(5)(b).

*Forfeiture***29 Section 57 amended (Further provisions relating to orders under section 55)** 10

In section 57(a)(ii) and (b), delete “section 35(2) or”.

*Investigation and prosecution of offences against Act or referred to in Conventions***30 Section 68 amended (Attorney-General to communicate outcome of prosecution)** 15

In section 68, after “financing of”, insert “, or provision of material support for,”.

*Extradition***31 Section 69 amended (Offences deemed to be included in extradition treaties)** 20

- (1) In section 69(1) and (3), after “financing of”, insert “, or provision of material support for,” in each place.
- (2) In section 69(4), after “**relevant date**,”, insert “means,”.
- (3) Replace section 69(4)(a) with: 25

- (a) in relation to terrorist bombing, 5 December 2002; and
- (aa) in relation to an offence against **section 8(1A) or (2B)**, the commencement date of the **Counter-Terrorism Legislation Act 2021**; and
- (ab) in relation to any other financing of, or provision of material support for, terrorism, 5 December 2002; and 30

*Repeal of spent provisions***32 Cross-heading above section 74 amended**

In the cross-heading above section 74, delete “*and saving and transitional provision*”.

33 Sections 76 to 80 and cross-headings repealed

Repeal sections 76 to 80 and the cross-headings above sections 76 to 79.

*Schedules***34 New Schedule 1AA inserted**

Insert the **Schedule 1AA** set out in **Schedule 1** of this Act as the first schedule to appear after the last section of the principal Act. 5

35 New Schedules 4D and 4E inserted

After Schedule 4C, insert the **Schedules 4D and 4E** set out in **Schedule 2** of this Act.

36 Schedule 5 amended

In Schedule 5, clauses 2 to 4, delete “financial institution or” in each place. 10

Part 2**Amendments to other Acts**

Subpart 1—Substantive amendments to Search and Surveillance Act
2012 15

37 Amendments to Search and Surveillance Act 2012

This subpart amends the Search and Surveillance Act 2012.

38 Section 15 amended (Entry without warrant to find and avoid loss of evidential material relating to certain offences)

In section 15(a), after “an offence punishable by imprisonment for a term of 14 years or more”, insert “or an offence against **section 6B(1)** (terrorist act: planning or other preparations to carry out) of the Terrorism Suppression Act 2002”. 20

39 Section 16 amended (Searching people in public place without warrant for evidential material relating to certain offences)

In section 16, after “an offence punishable by imprisonment for a term of 14 years or more”, insert “or an offence against **section 6B(1)** (terrorist act: planning or other preparations to carry out) of the Terrorism Suppression Act 2002”. 25

40 Section 17 amended (Warrantless entry and search of vehicle for evidential material relating to certain offences)

In section 17, after “an offence punishable by imprisonment for a term of 14 years or more”, insert “or an offence against **section 6B(1)** (terrorist act: plan- 30

ning or other preparations to carry out) of the Terrorism Suppression Act 2002”.

41 Section 48 amended (Surveillance device warrant need not be obtained for use of surveillance device in some situations of emergency or urgency)

In section 48(2)(a)(i), after “an offence punishable by a term of imprisonment of 14 years or more”, insert “or an offence against **section 6B(1)** (terrorist act: planning or other preparations to carry out) of the Terrorism Suppression Act 2002”.

Subpart 2—Substantive amendments to Terrorism Suppression (Control Orders) Act 2019

42 Amendments to Terrorism Suppression (Control Orders) Act 2019

This subpart amends the Terrorism Suppression (Control Orders) Act 2019.

43 Section 5 amended (Interpretation)

(1) In section 5, definition of **relevant person**, replace “section 6” with “**section 6(1AA)**.”

(2) In section 5, insert in their appropriate alphabetical order:

determinate sentence of imprisonment means a sentence of imprisonment for a fixed term and that is final, or that is the subject of an appeal unless the sentence is—

(a) suspended pending determination of the appeal; or

(b) set aside, and not replaced by a sentence of imprisonment for a fixed term, on the appeal

release conditions, in relation to 1 or more sentences of imprisonment that are or include a determinate sentence of imprisonment referred to in **section 6(5)(b) and (c)**, has the same meaning as in section 4(1) of the Parole Act 2002

relevant offender means a person to whom **section 6(5)** applies (*see section 6(1AA)*)

relevant returner means a person to whom section 6(1) applies (*see section 6(1AA)*)

statutory release date, in relation to 1 or more sentences of imprisonment that are or include a determinate sentence of imprisonment referred to in **section 6(5)(b) and (c)**, has the same meaning as in section 4(1) of the Parole Act 2002

terrorism-related New Zealand offence has the meaning in **section 8A**.

44 Section 6 amended (Meaning of relevant person)

(1) Above section 6(1), insert:

| | | |
|-----------|---|----|
| | <i>Definition: relevant returner or relevant offender</i> | |
| (1AA) | A relevant person means a person who is— | |
| | (a) a person to whom subsection (1) applies (and who, in this Act, is called, under section 5, a relevant returner); or | |
| | (b) a person to whom subsection (5) applies (and who, in this Act, is called, under section 5, a relevant offender). | 5 |
| | <i>Engagement in terrorism-related activities in foreign country</i> | |
| (2) | In section 6(1), replace “A relevant person is” with “This subsection applies to”. | |
| (3) | After section 6(4), insert: | 10 |
| | <i>Commission of terrorism-related New Zealand offence punished by determinate sentence of imprisonment</i> | |
| (5) | This subsection applies to a person who is 18 years old or older and— | |
| | (a) who, on or after the commencement date of the Counter-Terrorism Legislation Act 2021 , committed, and was convicted of, a terrorism-related New Zealand offence (<i>see</i> section 8A); and | 15 |
| | (b) who was sentenced, on or after that commencement date, for that offence, to a determinate sentence of imprisonment; and | |
| | (c) whose statutory release date, or whose last day as an offender who is subject to release conditions, for 1 or more sentences of imprisonment that are or include that determinate sentence of imprisonment, is after that commencement date. | 20 |
| 45 | Section 7 amended (Duty to have regard to specified aspects of evidence relied on) | |
| | In section 7(1), replace “section 6” with “section 6(1)”. | 25 |
| 46 | New section 8A inserted (Meaning of terrorism-related New Zealand offence) | |
| | After section 8, insert: | |
| 8A | Meaning of terrorism-related New Zealand offence | |
| | A terrorism-related New Zealand offence means an offence that is— | 30 |
| | (a) an offence against the Terrorism Suppression Act 2002 (even if that offence was committed wholly, or partly, outside New Zealand, but is prosecuted in New Zealand under any of sections 15 to 18 of that Act and sections 7, 8, and 8A of the Crimes Act 1961); or | |
| | (b) an offence— | 35 |

| | |
|---|----|
| <ul style="list-style-type: none"> (i) against section 124(1), 127(4), 129(3), or 131A(1) of the Films, Videos, and Publications Classification Act 1993, or section 390 of the Customs and Excise Act 2018; and (ii) that involves a publication that is objectionable (as those terms are defined in sections 2 and 3 of the Films, Videos, and Publications Classification Act 1993) for reasons that are or include the extent and degree to which, and the manner in which, the publication (as provided in section 3(3)(d) of that Act) promotes or encourages acts of terrorism. | 5 |
| 47 Section 12 amended (Power to make) | 10 |
| In section 12(1)(a), replace “sections 6, 7, and 8” with “sections 6(1AA) , 7, 8, and 8A ”. | |
| 48 Section 15 amended (Application for interim control order) | |
| (1) In the heading to section 15, after “ Application for interim control order ”, insert “ in respect of relevant returner ”. | 15 |
| (2) In section 15(1), (1)(a)(i) and (ii), (1)(b), (2)(a), (2)(a)(ii), (2)(b), (2)(b)(i) and (ii), (3), and (5), replace “person” with “returner” in each place. | |
| 49 Section 16 amended (Application for final control order) | |
| (1) In the heading to section 16, after “ Application for final control order ”, insert “ in respect of relevant returner ”. | 20 |
| (2) In section 16(1), (1)(a), (1)(b), (1)(b)(i), (1)(c), (2)(a), and (3), replace “person” with “returner” in each place. | |
| 50 New sections 16A and 16B inserted | |
| After section 16, insert: | |
| 16A Application for interim control order in respect of relevant offender | 25 |
| (1) The Commissioner may make an application for an interim control order in respect of a relevant offender only if— | |
| (a) the application is made— | |
| (i) after they become a relevant offender; and | |
| (ii) on or before their statutory release date, or their last day as an offender who is subject to release conditions, for the 1 or more sentences of imprisonment mentioned in section 6(5)(c) ; and | 30 |
| (b) the Commissioner believes on reasonable grounds that it is necessary and appropriate that the interim control order is made as soon as practicable in order to manage the real risks posed by the relevant offender of engagement in terrorism-related activities in a country. | 35 |

- (2) The application for the interim control order may be made, and must be heard and determined by the court, without notice to the relevant offender if the Commissioner believes on reasonable grounds that it is necessary and appropriate to make the application, and for it to be heard and determined, without notice in order to manage the real risks posed by the relevant offender of engagement in terrorism-related activities in a country. 5
- (3) If the application for the interim control order is made on notice to the relevant offender, the documents to be served must exclude any information supporting the application that is not disclosable supporting information.
- (4) The application for the interim control order must be— 10
- (a) set down for hearing, and heard, as soon as practicable; and
 - (b) determined as soon as practicable.
- (5) On or after making an interim control order in respect of a relevant offender, the court must consider whether to direct under **section 16B(1)(b)** a period (longer or shorter than 3 months after the date on which the interim order was served on the relevant offender) as the period within which the Commissioner may make an application for a final control order in respect of the relevant offender. 15
- 16B Application for final control order in respect of relevant offender-relevant person** 20
- (1) The Commissioner may make an application for a final control order in respect of a relevant offender only if—
- (a) no interim control order in respect of the relevant offender has been applied for, and the application for the final control order is made— 25
 - (i) after they become a relevant offender; and 25
 - (ii) on or before their statutory release date, or their last day as an offender who is subject to release conditions, for the 1 or more sentences of imprisonment mentioned in **section 6(5)(c)**; or
 - (b) an interim control order in respect of the relevant offender was applied for and made, and the application for the final control order is made— 30
 - (i) within 3 months after the date on which the interim order was served on the relevant offender; or
 - (ii) within any longer or shorter period the court directs (on its own initiative or on an application for the purpose made) on or after making the interim order and during that 3-month period; or 35
 - (c) an interim control order in respect of the relevant offender was applied for and declined, and the application for the final control order is made—
 - (i) after they become a relevant offender; and

- (ii) on or before their statutory release date, or their last day as an offender who is subject to release conditions, for the 1 or more sentences of imprisonment mentioned in **section 6(5)(c)**; and
 - (iii) because of a material change in circumstances since the interim control order was declined. 5
- (2) The application for the final control order must be—
- (a) made on notice to the relevant offender; and
 - (b) set down for hearing, and heard, as soon as practicable; and
 - (c) determined as soon as practicable.
- (3) Because the application for the final control order is made on notice to the relevant offender, the documents to be served must exclude any information supporting the application that is not disclosable supporting information. 10

51 Section 21 amended (Service of control order)

- (1) Replace section 21(2)(a) and (b) with:
- (a) if P is a relevant returner, and if practicable, on P’s arrival in New Zealand; or 15
 - (b) if P is a relevant returner, and if service on P’s arrival in New Zealand is not practicable, as soon as is reasonably practicable after P’s arrival in New Zealand; but
- (2) In section 21(3)(a), after “the same terrorism-related activities in a foreign country”, insert “or, as the case requires, the same terrorism-related New Zealand offence”. 20
- (3) In section 21(3)(b), after “later and different terrorism-related activities in a foreign country”, insert “or, as the case requires, a later and different terrorism-related New Zealand offence”. 25

52 Section 25 amended (Duration)

- (1) In section 25(1)(b), after “section 16(1)(b)”, insert “or **16B(1)(b)**”.
- (2) After section 25(4), insert:
- (4A) Those 2 years exclude, for a final control order in respect of a relevant offender, any period on or before their statutory release date, or their last day as an offender who is subject to release conditions, for the 1 or more sentences of imprisonment mentioned in **section 6(5)(c)**. 30
- (3) In section 25(6), after “terrorism-related activities in a foreign country”, insert “or terrorism-related New Zealand offence”.

53 Section 29 amended (Expiry if relevant person sentenced to long-term sentence) 35

In section 29(2), after “terrorism-related activities in a foreign country”, insert “or terrorism-related New Zealand offence”.

54 Section 38 amended (Review of Act)

In section 38(1), replace “this Act comes into force” with “the **Counter-Terrorism Legislation Act 2021** comes into force”.

55 Schedule 2 amended

In Schedule 2, replace “sections 6, 7, and 8(1)” with “**sections 6(1AA), 7, 8, and 8A**”. 5

Subpart 3—Consequential amendments related to Part 1

56 Consequential amendments to other enactments

Amend the enactments specified in **Schedule 3** as set out in that schedule.

Schedule 1
New Schedule 1AA inserted

s 34

Schedule 1AA
Transitional, savings, and related provisions

5

s 5B

Part 1
Provisions relating to Counter-Terrorism Legislation Act 2021

1 Definitions

In this Part,—

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Amendment Act means the **Counter-Terrorism Legislation Act 2021**

commencement means the commencement of the Amendment Act.

2 Amendments apply only to conduct after commencement

The amendments made by the Amendment Act apply only to conduct after the commencement.

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Schedule 2
New Schedules 4D and 4E inserted

s 35

Schedule 4D

United Nations Security Council Resolution 2178 (2014)

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s 4

Resolution 2178 (2014)**Adopted by the Security Council at its 7272nd meeting, on 24 September 2014***The Security Council,*

Reaffirming that terrorism in all forms and manifestations constitutes one of the most serious threats to international peace and security and that any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever and by whomsoever committed, and *remaining* determined to contribute further to enhancing the effectiveness of the overall effort to fight this scourge on a global level, 10

Noting with concern that the terrorism threat has become more diffuse, with an increase, in various regions of the world, of terrorist acts including those motivated by intolerance or extremism, and *expressing* its determination to combat this threat, 15

Bearing in mind the need to address the conditions conducive to the spread of terrorism, and *affirming* Member States' determination to continue to do all they can to resolve conflict and to deny terrorist groups the ability to put down roots and establish safe havens to address better the growing threat posed by terrorism, 20

Emphasizing that terrorism cannot and should not be associated with any religion, nationality or civilization,

Recognizing that international cooperation and any measures taken by Member States to prevent and combat terrorism must comply fully with the Charter of the United Nations, 25

Reaffirming its respect for the sovereignty, territorial integrity and political independence of all States in accordance with the Charter,

Reaffirming that Member States must ensure that any measures taken to counter terrorism comply with all their obligations under international law, in particular international human rights law, international refugee law, and international humanitarian law, *underscoring* that respect for human rights, fundamental freedoms and the rule of law are complementary and mutually reinforcing with effective counter-terrorism measures, and are an essential part of a successful counter-terrorism effort and notes the importance of respect for the rule of law so as to effectively prevent and combat terrorism, and *noting* that failure to comply with these and other international obligations, including under the Charter of the United Nations, is one of the factors contributing to increased radicalization and fosters a sense of impunity, 30
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Expressing grave concern over the acute and growing threat posed by foreign terrorist fighters, namely individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict, and *resolving* to address this threat,

5

Expressing grave concern about those who attempt to travel to become foreign terrorist fighters,

Concerned that foreign terrorist fighters increase the intensity, duration and intractability of conflicts, and also may pose a serious threat to their States of origin, the States they transit and the States to which they travel, as well as States neighbouring zones of armed conflict in which foreign terrorist fighters are active and that are affected by serious security burdens, and *noting* that the threat of foreign terrorist fighters may affect all regions and Member States, even those far from conflict zones, and *expressing grave concern* that foreign terrorist fighters are using their extremist ideology to promote terrorism,

10

15

Expressing concern that international networks have been established by terrorists and terrorist entities among States of origin, transit and destination through which foreign terrorist fighters and the resources to support them have been channelled back and forth,

Expressing particular concern that foreign terrorist fighters are being recruited by and are joining entities such as the Islamic State in Iraq and the Levant (ISIL), the Al-Nusrah Front (ANF) and other cells, affiliates, splinter groups or derivatives of Al-Qaida, as designated by the Committee established pursuant to resolutions 1267 (1999) and 1989 (2011), *recognizing* that the foreign terrorist fighter threat includes, among others, individuals supporting acts or activities of Al-Qaida and its cells, affiliates, splinter groups, and derivative entities, including by recruiting for or otherwise supporting acts or activities of such entities, and *stressing* the urgent need to address this particular threat,

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Recognizing that addressing the threat posed by foreign terrorist fighters requires comprehensively addressing underlying factors, including by preventing radicalization to terrorism, stemming recruitment, inhibiting foreign terrorist fighter travel, disrupting financial support to foreign terrorist fighters, countering violent extremism, which can be conducive to terrorism, countering incitement to terrorist acts motivated by extremism or intolerance, promoting political and religious tolerance, economic development and social cohesion and inclusiveness, ending and resolving armed conflicts, and facilitating reintegration and rehabilitation,

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Recognizing also that terrorism will not be defeated by military force, law enforcement measures, and intelligence operations alone, and *underlining* the need to address the conditions conducive to the spread of terrorism, as outlined in Pillar I of the United Nations Global Counter-Terrorism Strategy (A/RES/60/288),

40

Expressing concern over the increased use by terrorists and their supporters of communications technology for the purpose of radicalizing to terrorism, recruiting and

inciting others to commit terrorist acts, including through the internet, and financing and facilitating the travel and subsequent activities of foreign terrorist fighters, and *underlining* the need for Member States to act cooperatively to prevent terrorists from exploiting technology, communications and resources to incite support for terrorist acts, while respecting human rights and fundamental freedoms and in compliance with other obligations under international law, 5

Noting with appreciation the activities undertaken in the area of capacity building by United Nations entities, in particular entities of the Counter-Terrorism Implementation Task Force (CTITF), including the United Nations Office of Drugs and Crime (UNODC) and the United Nations Centre for Counter-Terrorism (UNCCT), and also the efforts of the Counter Terrorism Committee Executive Directorate (CTED) to facilitate technical assistance, specifically by promoting engagement between providers of capacity-building assistance and recipients, in coordination with other relevant international, regional and subregional organizations, to assist Member States, upon their request, in implementation of the United Nations Global Counter-Terrorism Strategy, 10 15

Noting recent developments and initiatives at the international, regional and subregional levels to prevent and suppress international terrorism, and *noting* the work of the Global Counterterrorism Forum (GCTF), in particular its recent adoption of a comprehensive set of good practices to address the foreign terrorist fighter phenomenon, and its publication of several other framework documents and good practices, including in the areas of countering violent extremism, criminal justice, prisons, kidnapping for ransom, providing support to victims of terrorism, and community-oriented policing, to assist interested States with the practical implementation of the United Nations counter-terrorism legal and policy framework and to complement the work of the relevant United Nations counter-terrorism entities in these areas, 20 25

Noting with appreciation the efforts of INTERPOL to address the threat posed by foreign terrorist fighters, including through global law enforcement information sharing enabled by the use of its secure communications network, databases, and system of advisory notices, procedures to track stolen, forged identity papers and travel documents, and INTERPOL's counter-terrorism fora and foreign terrorist fighter programme, 30

Having regard to and highlighting the situation of individuals of more than one nationality who travel to their states of nationality for the purpose of the perpetration, planning, preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, and *urging* States to take action, as appropriate, in compliance with their obligations under their domestic law and international law, including international human rights law, 35

Calling upon States to ensure, in conformity with international law, in particular international human rights law and international refugee law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, including by foreign terrorist fighters, 40

Reaffirming its call upon all States to become party to the international counter-terrorism conventions and protocols as soon as possible, whether or not they are a party to regional conventions on the matter, and to fully implement their obligations under those to which they are a party,

Noting the continued threat to international peace and security posed by terrorism, and *affirming* the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts, including those perpetrated by foreign terrorist fighters,

Acting under Chapter VII of the Charter of the United Nations,

1. *Condemns* the violent extremism, which can be conducive to terrorism, sectarian violence, and the commission of terrorist acts by foreign terrorist fighters, and *demands* that all foreign terrorist fighters disarm and cease all terrorist acts and participation in armed conflict; 10
2. *Reaffirms* that all States shall prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents, *underscores*, in this regard, the importance of addressing, in accordance with their relevant international obligations, the threat posed by foreign terrorist fighters, and *encourages* Member States to employ evidence-based traveller risk assessment and screening procedures including collection and analysis of travel data, without resorting to profiling based on stereotypes founded on grounds of discrimination prohibited by international law; 15
20
3. *Urges* Member States, in accordance with domestic and international law, to intensify and accelerate the exchange of operational information regarding actions or movements of terrorists or terrorist networks, including foreign terrorist fighters, especially with their States of residence or nationality, through bilateral or multilateral mechanisms, in particular the United Nations; 25
4. *Calls upon* all Member States, in accordance with their obligations under international law, to cooperate in efforts to address the threat posed by foreign terrorist fighters, including by preventing the radicalization to terrorism and recruitment of foreign terrorist fighters, including children, preventing foreign terrorist fighters from crossing their borders, disrupting and preventing financial support to foreign terrorist fighters, and developing and implementing prosecution, rehabilitation and reintegration strategies for returning foreign terrorist fighters; 30
35
5. *Decides* that Member States shall, consistent with international human rights law, international refugee law, and international humanitarian law, prevent and suppress the recruiting, organizing, transporting or equipping of individuals who travel to a State other than their States of residence or nationality for the 40

- purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, and the financing of their travel and of their activities;
6. *Recalls* its decision, in resolution 1373 (2001), that all Member States shall ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice, and *decides* that all States shall ensure that their domestic laws and regulations establish serious criminal offenses sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offense:
- (a) their nationals who travel or attempt to travel to a State other than their States of residence or nationality, and other individuals who travel or attempt to travel from their territories to a State other than their States of residence or nationality, for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training;
 - (b) the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to finance the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training; and,
 - (c) the wilful organization, or other facilitation, including acts of recruitment, by their nationals or in their territories, of the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training;
7. *Expresses* its strong determination to consider listing pursuant to resolution 2161 (2014) individuals, groups, undertakings and entities associated with Al-Qaida who are financing, arming, planning, or recruiting for them, or otherwise supporting their acts or activities, including through information and communications technologies, such as the internet, social media, or any other means;
8. *Decides* that, without prejudice to entry or transit necessary in the furtherance of a judicial process, including in furtherance of such a process related to arrest or detention of a foreign terrorist fighter, Member States shall prevent the entry into or transit through their territories of any individual about whom that State has credible information that provides reasonable grounds to believe that he or she is seeking entry into or transit through their territory for the purpose of participating in the acts described in paragraph 6, including any acts or activities indicating that an individual, group, undertaking or entity is associated with Al-

Qaida, as set out in paragraph 2 of resolution 2161 (2014), provided that nothing in this paragraph shall oblige any State to deny entry or require the departure from its territories of its own nationals or permanent residents;

9. *Calls upon* Member States to require that airlines operating in their territories provide advance passenger information to the appropriate national authorities in order to detect the departure from their territories, or attempted entry into or transit through their territories, by means of civil aircraft, of individuals designated by the Committee established pursuant to resolutions 1267 (1999) and 1989 (2011) (“the Committee”), and further *calls upon* Member States to report any such departure from their territories, or such attempted entry into or transit through their territories, of such individuals to the Committee, as well as sharing this information with the State of residence or nationality, as appropriate and in accordance with domestic law and international obligations; 5 10
10. *Stresses* the urgent need to implement fully and immediately this resolution with respect to foreign terrorist fighters, *underscores* the particular and urgent need to implement this resolution with respect to those foreign terrorist fighters who are associated with ISIL, ANF and other cells, affiliates, splinter groups or derivatives of Al-Qaida, as designated by the Committee, and *expresses* its readiness to consider designating, under resolution 2161 (2014), individuals associated with Al-Qaida who commit the acts specified in paragraph 6 above; 15 20

International Cooperation

11. *Calls upon* Member States to improve international, regional, and subregional cooperation, if appropriate through bilateral agreements, to prevent the travel of foreign terrorist fighters from or through their territories, including through increased sharing of information for the purpose of identifying foreign terrorist fighters, the sharing and adoption of best practices, and improved understanding of the patterns of travel by foreign terrorist fighters, and for Member States to act cooperatively when taking national measures to prevent terrorists from exploiting technology, communications and resources to incite support for terrorist acts, while respecting human rights and fundamental freedoms and in compliance with other obligations under international law; 25 30
12. *Recalls* its decision in resolution 1373 (2001) that Member States shall afford one another the greatest measure of assistance in connection with criminal investigations or proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings, and *underlines* the importance of fulfilling this obligation with respect to such investigations or proceedings involving foreign terrorist fighters; 35
13. *Encourages* Interpol to intensify its efforts with respect to the foreign terrorist fighter threat and to recommend or put in place additional resources to support 40

- and encourage national, regional and international measures to monitor and prevent the transit of foreign terrorist fighters, such as expanding the use of INTERPOL Special Notices to include foreign terrorist fighters;
14. *Calls upon* States to help build the capacity of States to address the threat posed by foreign terrorist fighters, including to prevent and interdict foreign terrorist fighter travel across land and maritime borders, in particular the States neighbouring zones of armed conflict where there are foreign terrorist fighters, and *welcomes* and *encourages* bilateral assistance by Member States to help build such national capacity; 5
- Countering Violent Extremism in Order to Prevent Terrorism* 10
15. *Underscores* that countering violent extremism, which can be conducive to terrorism, including preventing radicalization, recruitment, and mobilization of individuals into terrorist groups and becoming foreign terrorist fighters is an essential element of addressing the threat to international peace and security posed by foreign terrorist fighters, and *calls upon* Member States to enhance efforts to counter this kind of violent extremism; 15
16. *Encourages* Member States to engage relevant local communities and non-governmental actors in developing strategies to counter the violent extremist narrative that can incite terrorist acts, address the conditions conducive to the spread of violent extremism, which can be conducive to terrorism, including by empowering youth, families, women, religious, cultural and education leaders, and all other concerned groups of civil society and adopt tailored approaches to countering recruitment to this kind of violent extremism and promoting social inclusion and cohesion; 20
17. *Recalls* its decision in paragraph 14 of resolution 2161 (2014) with respect to improvised explosive devices (IEDs) and individuals, groups, undertakings and entities associated with Al-Qaida, and *urges* Member States, in this context, to act cooperatively when taking national measures to prevent terrorists from exploiting technology, communications and resources, including audio and video, to incite support for terrorist acts, while respecting human rights and fundamental freedoms and in compliance with other obligations under international law; 25
30
18. *Calls upon* Member States to cooperate and consistently support each other's efforts to counter violent extremism, which can be conducive to terrorism, including through capacity building, coordination of plans and efforts, and sharing lessons learned; 35
19. *Emphasizes* in this regard the importance of Member States' efforts to develop non-violent alternative avenues for conflict prevention and resolution by affected individuals and local communities to decrease the risk of radicaliza-

tion to terrorism, and of efforts to promote peaceful alternatives to violent narratives espoused by foreign terrorist fighters, and *underscores* the role education can play in countering terrorist narratives;

United Nations Engagement on the Foreign Terrorist Fighter Threat

20. *Notes* that foreign terrorist fighters and those who finance or otherwise facilitate their travel and subsequent activities may be eligible for inclusion on the Al-Qaida Sanctions List maintained by the Committee pursuant to resolutions 1267 (1999) and 1989 (2011) where they participate in the financing, planning, facilitating, preparing, or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of, Al-Qaida, supplying, selling or transferring arms and related materiel to, or recruiting for, or otherwise supporting acts or activities of Al-Qaida or any cell, affiliate, splinter group or derivative thereof, and *calls upon* States to propose such foreign terrorist fighters and those who facilitate or finance their travel and subsequent activities for possible designation;
21. *Directs* the Committee established pursuant to resolution 1267 (1999) and 1989 (2011) and the Analytical Support and Sanctions Monitoring Team, in close cooperation with all relevant United Nations counter-terrorism bodies, in particular CTED, to devote special focus to the threat posed by foreign terrorist fighters recruited by or joining ISIL, ANF and all groups, undertakings and entities associated with Al-Qaida;
22. *Encourages* the Analytical Support and Sanctions Monitoring Team to coordinate its efforts to monitor and respond to the threat posed by foreign terrorist fighters with other United Nations counter-terrorism bodies, in particular the CTITF;
23. *Requests* the Analytical Support and Sanctions Monitoring Team, in close cooperation with other United Nations counter-terrorism bodies, to report to the Committee established pursuant to resolutions 1267 (1999) and 1989 (2011) within 180 days, and provide a preliminary oral update to the Committee within 60 days, on the threat posed by foreign terrorist fighters recruited by or joining ISIL, ANF and all groups, undertakings and entities associated with Al-Qaida, including:
- (a) a comprehensive assessment of the threat posed by these foreign terrorist fighters, including their facilitators, the most affected regions and trends in radicalization to terrorism, facilitation, recruitment, demographics, and financing; and
 - (b) recommendations for actions that can be taken to enhance the response to the threat posed by these foreign terrorist fighters;

24. *Requests* the Counter-Terrorism Committee, within its existing mandate and with the support of CTED, to identify principal gaps in Member States' capacities to implement Security Council resolutions 1373 (2001) and 1624 (2005) that may hinder States' abilities to stem the flow of foreign terrorist fighters, as well as to identify good practices to stem the flow of foreign terrorist fighters in the implementation of resolutions 1373 (2001) and 1624 (2005), and to facilitate technical assistance, specifically by promoting engagement between providers of capacity-building assistance and recipients, especially those in the most affected regions, including through the development, upon their request, of comprehensive counter-terrorism strategies that encompass countering violent radicalization and the flow of foreign terrorist fighters, recalling the roles of other relevant actors, for example the Global Counterterrorism Forum; 5
10
25. *Underlines* that the increasing threat posed by foreign terrorist fighters is part of the emerging issues, trends and developments related to resolutions 1373 (2001) and 1624 (2005), that, in paragraph 5 of resolution 2129 (2013), the Security Council directed CTED to identify, and therefore merits close attention by the Counter-Terrorism Committee, consistent with its mandate; 15
26. *Requests* the Committee established pursuant to resolutions 1267 (1999) and 1989 (2011) and the Counter-Terrorism Committee to update the Security Council on their respective efforts pursuant to this resolution; 20
27. *Decides* to remain seized of the matter.

Schedule 4E

Applicable maximum penalties for offence against section 13F(1)

s 13F(5)

| Item | Offence against | Maximum penalty |
|------|--|---|
| 1 | Section 13F(3)(a) — section 6A (terrorist act: credible threat and carrying out (but excluding an attempt)) | Imprisonment for a term not exceeding 10 years |
| 2 | Section 13F(3)(b) — section 6B (terrorist act: planning or other preparations to carry out) | Imprisonment for a term not exceeding 3 years and 6 months |
| 3 | Section 13F(3)(c) — section 7 (terrorist bombing) | Imprisonment for a term not exceeding 10 years |
| 4 | Section 13F(3)(d) — section 8 (financing of, or provision of material support for, terrorism) | Imprisonment for a term not exceeding— (a) 7 years, if the mental element under section 8(1)(d), (1A)(d), (2A)(d), or (2B)(d) is intention; or (b) 5 years, if the mental element under section 8(1)(d), (1A)(d), (2A)(d), or (2B)(d) is knowledge or recklessness |
| 5 | Section 13F(3)(e) — section 9 (prohibition on dealing with property of, or derived or generated from property of, designated terrorist entity) | Imprisonment for a term not exceeding 3 years and 6 months |
| 6 | Section 13F(3)(f) — section 10 (prohibition on making property, or material support, available to designated terrorist entity) | Imprisonment for a term not exceeding 5 years |
| 7 | Section 13F(3)(g) — section 12 (recruiting members of terrorist groups) | Imprisonment for a term not exceeding 7 years |
| 8 | Section 13F(3)(h) — section 13 (participating in terrorist groups) | Imprisonment for a term not exceeding 7 years |
| 9 | Section 13F(3)(i) — section 13AA (providing or receiving weapons training or combat training for terrorist purposes) | Imprisonment for a term not exceeding 3 years and 6 months |
| 10 | Section 13F(3)(j) — section 13A (harbouring or concealing terrorists) | Imprisonment for a term not exceeding 3 years and 6 months |
| 11 | Section 13F(3)(k) — section 13B (offences involving use and movement of unmarked plastic explosives) | Imprisonment for a term not exceeding 5 years or a fine not exceeding \$250,000, or both |

| Item | Offence against | Maximum penalty |
|-------------|--|---|
| 12 | Section 13F(3)(l) — section 13C (offences involving physical protection of nuclear material) | Imprisonment for a term not exceeding 5 years or a fine not exceeding \$250,000, or both |
| 13 | Section 13F(3)(m) — section 13D (importation, acquisition, etc, of radioactive material) | Imprisonment for a term not exceeding 5 years |
| 14 | Section 13F(3)(n) — section 13E (offences involving radioactive material and radioactive devices) | Imprisonment for a term not exceeding 5 years or a fine not exceeding \$250,000, or both |

Schedule 3

Consequential amendments

s 56

Charities Act 2005 (2005 No 39)

In section 13(5)(b), replace “13E” with “**13F**”. 5

Crimes Act 1961 (1961 No 43)

In section 7A(1), replace “(as defined in section 5(1) of the Terrorism Suppression Act 2002)” with “(within the meanings of those terms or expressions in sections 5 and **5A** of the Terrorism Suppression Act 2002)”.

In section 7B(3), replace “(as defined in section 5(1) of the Terrorism Suppression Act 2002)” with “(within the meanings of those terms or expressions in sections 5 and **5A** of the Terrorism Suppression Act 2002)”. 10

Criminal Investigations (Bodily Samples) Act 1995 (1995 No 55)

In Schedule 1, Part 2, item relating to section 8 of the Terrorism Suppression Act 2002, replace “Financing of terrorism” with “Financing of, or provision of material support for, terrorism”. 15

Criminal Procedure Act 2011 (2011 No 81)

In Schedule 1, Part 2, replace the item relating to the Terrorism Suppression Act 2002 with:

Terrorism Suppression Act 2002 20

| Section | Offence |
|---------------------|---|
| Section 6A | Terrorist act: credible threat, attempt, and carrying out |
| Section 6B | Terrorist act: planning or other preparations to carry out <u>(but, despite section 6(2)(a) and (b) of this Act, and in line with section 6B(5), this item does not make any of the following also a category 4 offence:</u> |
| | (a) <u>conspiring to commit an offence against section 6B:</u> |
| | (b) <u>attempting to commit an offence against section 6B:</u> |
| | (c) <u>inciting or counselling or procuring or attempting to procure any person to commit an offence against section 6B that is not committed)</u> |
| Section 7 | Terrorist bombing |
| Section 8 | Financing of, or provision of material support for, terrorism |
| Section 9 | Prohibition on dealing with property of, or derived or generated from property of, designated terrorist entity |
| Section 10 | Prohibition on making property, or material support, available to designated terrorist entity |
| Section 12 | Recruiting members of terrorist groups |
| Section 13 | Participating in terrorist groups |
| Section 13AA | Providing or receiving weapons or combat training for terrorist purposes |
| Section 13A | Harbouring or concealing terrorists |
| Section 13B | Offences involving use and movement of unmarked plastic explosives |

Criminal Procedure Act 2011 (2011 No 81)—continued

| Section | Offence |
|--------------------|---|
| Section 13C | Offences involving physical protection of nuclear material |
| Section 13D | Importation, acquisition, etc, of radioactive material |
| Section 13E | Offences involving radioactive material and radioactive devices |
| Section 13F | Travelling intending to commit specified offence |

Criminal Proceeds (Recovery) Act 2009 (2009 No 8)

In section 5(1), definition of **instrument of crime**, replace paragraph (b) with:

- (b) in relation to a qualifying instrument forfeiture offence that is an offence against **section 8(1), (1A), (2A), or (2B)** of the Terrorism Suppression Act 2002, includes funds (as defined in section 4(1) of that Act) allocated for the purposes of committing that offence; and 5

Customs and Excise Act 2018 (2018 No 4)

In the heading to section 249, replace “**essential human needs**” with “**basic needs**”.

In section 249(1), replace “**essential human needs**” with “**basic needs (as defined in section 4(1) of the Terrorism Suppression Act 2002)**”. 10

Financial Service Providers (Registration and Dispute Resolution) Act 2008 (2008 No 97)

Replace section 14(2)(f) with:

- (f) a person who has been convicted of a money laundering offence or an offence relating to the financing of, or provision of material support for, terrorism, whether in New Zealand or elsewhere: 15

Immigration Act 2009 (2009 No 51)

In section 303A(5), definition of **person of interest**, replace paragraph (a) with:

- (a) poses a threat or risk to the security of New Zealand or another country because the person intends to— 20
- (i) carry out, or facilitate, a terrorist act (within the meanings of those terms or expressions in sections 5 and **5A** of the Terrorism Suppression Act 2002); or
- (ii) engage in, or facilitate, the proliferation of weapons of mass destruction; or 25
- (iii) engage in, or facilitate, any other unlawful activity designed or likely to cause serious economic damage to New Zealand, carried out for the purpose of commercial or economic gain; or

Oranga Tamariki Act 1989 (1989 No 24)

In Schedule 1A, replace the item relating to the Terrorism Suppression Act 2002, section 6A, with: 30

Oranga Tamariki Act 1989 (1989 No 24)—*continued*

| | |
|--|--|
| Terrorist act: credible threat and carrying out (but excluding an attempt) | Terrorism Suppression Act 2002, section 6A(1) (but excluding an attempt) |
|--|--|

In Schedule 1A, replace the item relating to the Terrorism Suppression Act 2002, section 8, with:

| | |
|---|---|
| Financing of, or provision of material support for, terrorism | Terrorism Suppression Act 2002, section 8(1), (1A), (2A), or (2B) |
|---|---|

Passports Act 1992 (1992 No 92)

Replace section 27GA(1)(a) with:

- | | |
|---|----|
| (a) the person is a danger to the security of New Zealand because the person intends to— | 5 |
| (i) carry out, or facilitate, a terrorist act (within the meanings of those terms or expressions in sections 5 and 5A of the Terrorism Suppression Act 2002); or | |
| (ii) engage in, or facilitate, the proliferation of weapons of mass destruction; or | 10 |
| (iii) engage in, or facilitate, any other unlawful activity designed or likely to cause serious economic damage to New Zealand, carried out for the purpose of commercial or economic gain; and | |

Replace section 27GA(2)(a) with: 15

- | | |
|---|----|
| (a) the person is a danger to the security of a country other than New Zealand because the person intends to— | |
| (i) carry out, or facilitate, a terrorist act (within the meanings of those terms or expressions in sections 5 and 5A of the Terrorism Suppression Act 2002); or | 20 |
| (ii) engage in, or facilitate, the proliferation of weapons of mass destruction; and | |

Replace section 29AA(1)(c)(i) with:

- | | |
|--|----|
| (i) the person concerned was a danger to the security of New Zealand or another country because the person intended to carry out, engage in, or facilitate, an activity of a kind described in section 27GA(1)(a) or (2)(a) ; and | 25 |
|--|----|

Replace section 29AA(2)(b)(i) with:

- | | |
|--|----|
| (i) the person concerned is a danger to the security of New Zealand or another country because the person intends to carry out, engage in, or facilitate, an activity of a kind described in section 27GA(1)(a) or (2)(a) ; and | 30 |
|--|----|

Replace section 29AA(5)(a)(i) with:

Passports Act 1992 (1992 No 92)—*continued*

- (i) the person concerned is a danger to the security of New Zealand or another country because the person intends to carry out, engage in, or facilitate, an activity of a kind described in **section 27GA(1)(a) or (2)(a)**; and

Sentencing Act 2002 (2002 No 9)

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In section 4(1), definition of **instrument of crime**, replace paragraph (b) with:

- (b) in relation to a qualifying instrument forfeiture offence that is an offence against **section 8(1), (1A), (2A), or (2B)** of the Terrorism Suppression Act 2002, includes funds (as defined in section 4(1) of that Act) allocated for the purposes of committing that offence; and

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Legislative history

13 April 2021
5 May 2021

Introduction (Bill 29–1)
First reading and referral to Justice Committee