

## MINISTER OF PUBLIC SAFETY PUBLISHES GUIDANCE ON CRIMINAL CODE EXCEPTIONS WHEN PROVIDING AID IN AREAS CONTROLLED BY TERRORIST GROUPS

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### A. INTRODUCTION

The anti-terrorist financing provisions of the *Criminal Code* (the “Code”) are the critical elements of Canada’s counter-terrorism efforts. However, the Taliban’s takeover of Afghanistan in August 2021 drew attention to the difficulties in delivering international assistance in areas controlled by terrorist groups without violating provisions of the Code. To address these serious shortcomings that have been a reality for Canadian international charities for decades, Bill C-41, *An Act to amend the Criminal Code and to make consequential amendments to other Acts*, was passed on June 20, 2023, amending the anti-terrorist financing provisions in section 83.03 of the Code to allow humanitarian exceptions and the establishment of an Authorization Regime (as described below) for specific activities in terrorist-controlled areas.<sup>1</sup> An

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<sup>1</sup> Bill C-41, *An Act to amend the Criminal Code and to make consequential amendments to other Acts*, 1st Sess, 44th Parl, 2023 (Royal Assent 20 June 2023).

explanation of the two exceptions in Bill C-41 was previously set out in our [AML/ATF and Charity Law Alert No. 53](#), in August 2023.<sup>2</sup>

In our *Alert No. 53*, we explained that subsections 83.03(1) and (2) of the Code (and their predecessors, subsections 83.03(a) and (b)) make it an indictable offence, liable to a term of not more than 10 years imprisonment, for any person who directly or indirectly makes available property or financial or other related services for terrorist purposes or for use by terrorist groups. As mentioned above, the language in these provisions was broad enough to include circumstances where Canadian charities and not-for-profits (“NFPs”) wished to provide humanitarian aid in Afghanistan following the return to power of the Taliban.

Bill C-41 modified the anti-terrorist financing offences found in subsections 83.03(1) and (2) of the Code by specifying that such activities may not be done “wilfully and without lawful justification or excuse”. This amendment to the Code provides some element of comfort to charities and NFPs that provide humanitarian aid and other essential services with a “lawful justification”. Examples of what constitutes potential lawful justifications include the two exceptions listed in section 83.03 being: (1) a blanket exception for “humanitarian assistance activities” (the “Humanitarian Assistance Exception”), and (2) a narrower exception for certain activities that is dependent on an organization applying for and receiving an authorization from the federal government to carry out certain activities in a geographic area controlled by a terrorist group (the “Authorization Regime”).<sup>3</sup>

For nearly a year, charities and NFPs that wished to take advantage of the exceptions provided by Bill C-41 were without any guidance on how to proceed, as there was nothing to explain how the Minister of Public Safety (the “Public Safety Minister”) and law enforcement agencies would treat charitable/humanitarian organizations wanting to work under the new legislation. This led to a precarious position where groups were reluctant to provide assistance for fear of falling outside the new exceptions.

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<sup>2</sup> Terrance S. Carter, Nancy E. Claridge, and Sean S. Carter, “A Practical Guide for Charities and Humanitarian Organizations to Bill C-41 and the Provision of Aid”, *AML/ATF and Charity Law Alert No. 53* (31 August 2023), online: Carters Professional Corporation: <<https://www.carters.ca/pub/bulletin/charity/2023/atcylb53.pdf>>. See also Terrance S. Carter et al, “Humanitarian Aid Authorization Proposed in Bill C-41”, *AML/ATF and Charity Law Alert No. 51* (30 March 2023), online: Carters Professional Corporation <<https://www.carters.ca/pub/bulletin/charity/2023/atcylb51.pdf>>. See also Terrance S. Carter et al, “Amendments to Bill C-41 Facilitate Distribution of Humanitarian Aid, but Issues Remain”, *AML/ATF and Charity Law Alert No. 52* (28 June 2023), online: Carters Professional Corporation <<https://www.carters.ca/pub/bulletin/charity/2023/atcylb52.pdf>>.

<sup>3</sup> *Criminal Code*, RSC 1985, c C-46, ss 83.03 (1) and (2).

As an accountability measure under subsection 83.0392(1) of the Code, the Public Safety Minister is required to prepare an annual report detailing the operation of sections 83.031 to 83.0391 for the previous calendar year. As a result, the Department of Public Safety Canada released the “2023 Annual Report of the Minister of Public Safety Concerning *Criminal Code* sections 83.031 to 83.0391: A Regime to Authorize Certain Activities in a Geographic Area that is Controlled By a Terrorist Group” on April 19, 2024 (the “2023 Annual Report”).<sup>4</sup> The 2023 Annual Report, while providing a basic overview of the Authorization Regime, as well as the progress of operationalizing the Authorization Regime and setting out the role of various government partners, including Global Affairs Canada, Immigration, Refugees and Citizenship Canada, Royal Canadian Mounted Police, Canada Revenue Agency and Finance Canada, provided only limited information concerning the application of the two exemptions provided for in Bill C-41.

However, on June 19, 2024, the Department of Public Safety Canada officially launched the Authorization Regime and has now started accepting applications for authorization from eligible members of the public and/or organizations. In doing so, the Department of Public Safety Canada released an operational policy guidance titled *Authorization regime and humanitarian exception for activities in terrorist group controlled areas - Section 83.03 Criminal Code* (the “Guidance”).<sup>5</sup> The Guidance provides clarity concerning the two exceptions provided by Bill C-41 and, most significantly, the process for applying for the narrow exception for certain activities under the Authorization Regime.

Those interested in submitting an application under the Authorization Regime [can fill out and submit the form](#), but organizations are advised to consult with legal counsel before doing so because of the complexities involved in the application process and the risks of noncompliance.

This *AML/ATF Alert* summarizes the contents of the Guidance and explains what is required from the Public Safety Minister to ensure that charities and NFPs can provide legitimate aid without fear of prosecution under the Code.

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<sup>4</sup> See Public Safety Canada, online: <<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2023-nnl-prt-crmnl-cd-sctns-83/index-en.aspx>>.

<sup>5</sup> See Public Safety Canada, online: <<https://www.publicsafety.gc.ca/cnt/ntnl-scrtr/cntr-trrsm/hmtrn-xcptrn/index-en.aspx>>

## B. ABOUT THE AUTHORIZATION REGIME AND HUMANITARIAN ASSISTANCE EXCEPTION

The Guidance explains that the Authorization Regime aims to ensure that the broad terrorist-financing offence in subsection 83.03(2) (formerly 83.03(b)) does not unintentionally hinder international assistance and other necessary activities. As explained above, prior to Bill C-41, section 83.03 lacked flexibility for exceptions where needed activities might incidentally benefit a terrorist group. The Authorization Regime provides this flexibility, allowing organizations to obtain protection from criminal liability under subsection 83.03(2) for specific activities in terrorist-controlled areas.

### 1. What are “benefits” to a terrorist group

The intention of preventing “benefits” from being provided to a terrorist group is to prevent Canadian individuals or organizations from being complicit in the support of terrorism, be it intentional or unintentional. Prior to the changes brought by Bill C-41, the rigidity of the relevant sections of the Code had the unintended consequence of largely preventing aid from flowing to areas controlled by terrorist groups. For example, as the Taliban is the *de facto* government of Afghanistan, they assume all functions of a nation state, including the collection of taxes. Therefore, the importation of goods, including lifesaving aid such as medicine, was presumably subject to taxation by the Taliban. This therefore prevented any aid from being sent, as it would constitute a benefit to the Taliban under the old provisions of the Code.

The Guidance explains that examples of “unavoidable direct or indirect benefits to a terrorist group in delivering international assistance” include payments to local personnel, transportation costs, taxes, and administrative fees. If individuals or organizations are carrying out activities for a Government of Canada department, that department is responsible for obtaining any necessary authorization, which would also protect “implementing partners” and third-party providers.

### 2. Scope of the Authorization Regime within the *Criminal Code*

The Authorization Regime specifically addresses the terrorist financing provision in subsection 83.03(2) of the Code. Authorizations from the Public Safety Minister only protect applicants from criminal liability under subsection 83.03(2) for unknowingly providing unavoidable benefits to a terrorist group while conducting eligible activities specified in the legislation. Applicants must otherwise have safeguards to manage funds and prevent their diversion to terrorist groups.

The Guidance states that the government does not regulate international assistance activities, and the need for authorization depends on whether planned activities might benefit a terrorist group, violating subsection 83.03(2). Neither the Authorization Regime under subsection 83.03(3) nor the Humanitarian Assistance Exception under subsection 83.03(4) protects against other criminal offences under Canadian law.

### 3. Humanitarian Assistance Exception

The Humanitarian Assistance Exception under subsection 83.03(4) of the Code applies to activities solely aimed at providing humanitarian assistance by impartial humanitarian organizations in accordance with international law, while making reasonable efforts to minimize benefits to terrorist groups. Those who meet these criteria are shielded from criminal liability for humanitarian assistance activities, serving as a defense if charged under section 83.03 of the Code.

The Guidance indicates that no application process is required for this exception, as it automatically applies to qualifying humanitarian activities. The Humanitarian Assistance Exception is separate from the Authorization Regime. An explanation of “humanitarian assistance activities” in the Guidance provides non-binding guidance. As such, legal advice should be sought to determine if an activity falls outside the generally accepted scope of this term.

The following is the Guidance’s non-exhaustive list of humanitarian assistance activities, which may include:

- Assistance that seeks to save lives and alleviate suffering of a crisis-affected population. This includes actions that, within a short time span, remedy, mitigate or avert direct loss of life and harm to people, and protect their dignity, as defined in the CERF Life Saving Criteria. This includes, but is not limited to food and non-food items, emergency medical services to treat life or limb-threatening situations, nutrition services, shelter, water, sanitation, hygiene, and protection.
- Common support services that are necessary to enable life-saving activities to be carried out (*e.g.*, logistics, including supply chain management, transportation of aid, including the use of aircraft and/or ships, camp management, emergency telecommunications, technical supervision, training, monitoring, and evaluation of programming, *etc.*).

- Transactions necessary and incidental to carrying out humanitarian activities or supporting humanitarian organizations (e.g., administrative transactions such as the payment of staff and contractor salaries, maintenance of bank accounts, duties and other fees, taxes, licences, etc.).<sup>6</sup>

The distinction between activities described in subsection 83.03(4) of the Code and those requiring an authorization under the Authorization Regime is based on context. Activities that address acute and immediate needs to save lives and alleviate suffering typically fall under the Humanitarian Assistance Exception. In contrast, activities provided outside of these urgent situations will generally require authorization.

For instance, providing food and medical assistance during a famine is considered humanitarian assistance, while a routine annual disease eradication campaign is categorized as a development activity. Similarly, demining in a populated area to enable humanitarian aid qualifies as humanitarian assistance, whereas demining for long-term development purposes does not.

“Impartial humanitarian organizations” are understood to be organizations that deliver assistance based on need, without discrimination based on race, colour, sex, language, religion, political opinions, national origin, wealth, birth, or other status. For more details on the meaning of “impartial” and “humanitarian organizations,” the Guidance states that reference should be made to the *Geneva Conventions* and various related commentaries.<sup>7</sup>

### C. GEOGRAPHIC AREAS CONTROLLED BY A TERRORIST GROUP

While the changes to the Code were initiated after the Taliban’s takeover of Afghanistan in August 2021, the Authorization Regime applies to any area controlled by a terrorist group, not just Afghanistan. For the purposes of the Authorization Regime, a terrorist group controls an area if it exerts enough influence that activities there could reasonably result in the group benefiting from property, financial, or related services linked to those activities. This can include an entire country, a province, city, or part of a city or region.

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<sup>6</sup> See Public Safety Canada, online: <<https://www.publicsafety.gc.ca/cnt/ntnl-scrtr/entr-trrrsm/hmtrn-xcptn/bt-en.aspx#s2>>.

<sup>7</sup> For additional context on international standards related to the meaning of “impartial”, consult the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Commentary of 1987 on Article 9 – Field of Application, para 439.

For additional information on international standards related to the meaning of “humanitarian organizations”, consult the Geneva Convention (III) relative to the Treatment of Prisoners of War of 12 August 1949, Commentary of 2020 on Article 9 – Activities of the ICRC and other impartial humanitarian organizations, para 1338 and 1340.

Moreover, “terrorist group” is defined in subsection 83.01(1) of the Code as an entity that either facilitates or carries out “any terrorist activity” or is a “listed entity,” including associations of such entities. “Terrorist activity” is defined in subsection 83.01(1) of the Code.

“Listed Entities” includes the list of terrorist entities designated under the Code, which can be accessed on the Public Safety Canada webpage for “[Currently listed entities](#)”.

Not all terrorist groups are necessarily “listed entities” as per the definition of “terrorist group”. Applications for authorization will be evaluated based on the specific facts and information provided in each application, considering the evolving nature of global terrorism threats and patterns.

#### **D. ELIGIBLE APPLICANTS FOR AN AUTHORIZATION**

##### 1. Eligible applicants for an authorization

In accordance with subsection 83.032(4) of the Code, “a person is eligible to be granted an authorization if they are in Canada or are a Canadian outside Canada.” Notably, organizations are included in the definition of “person” provided by s. 2 of the Code. The Guidance elaborates on eligible persons under subsection 83.032(4) of the Code and lists them as follows:

1. An organization located in Canada (“organization” is included in the definition of “everyone, person or owner” in section 2 of the Code and “organization” is defined in section 2 as a corporation or an otherwise structured association of persons); or
2. Any individual, as long as they are:
  - a. Located in Canada; or
  - b. Located outside Canada, but are also:

- i. a Canadian citizen; or
  - ii. a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act;
3. A body corporate located outside Canada that is incorporated and continued under the laws of Canada or a province (see definition of “Canadian” in subsection 83.01(1) of the Code and subsection 83.032(4) that uses the term “a Canadian outside Canada”).<sup>8</sup>

An application for authorization can be submitted jointly by eligible individuals or organizations collaborating on the same activities.

Activities conducted through intermediaries known to be charitable arms or affiliated with a terrorist group would not be authorized and would be subject to terrorism offences under the Code.

If organizations receive funding from a Government of Canada department for their programs or activities, the department itself is responsible for applying for authorization. Once granted, this authorization extends to shield the implementing organization and its third-party sub-implementing partners from criminal liability.

## 2. Activities and specified purposes for an authorization

Once granted, an authorization protects eligible Canadian individuals, organizations, and persons in Canada from criminal liability under subsection 83.03(2) of the Code when they engage in specified activities or classes of activities for specified purposes. This protection applies, provided that authorization holders comply with any terms and conditions stipulated.

The Government of Canada does not directly regulate these activities. Instead, authorizations are issued to shield holders from criminal liability in situations where these activities could unintentionally benefit a terrorist group, potentially violating subsection 83.03(2) of the Code.

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<sup>8</sup> See Public Safety Canada, online: <https://www.publicsafety.gc.ca/cnt/ntnl-scr/cntr-trrrsm/hmntrn-xcptn/lgbly-en.aspx>



Activities carried out for any of the following purposes are protected by an authorization:

- [Health services](#);
- [Education services](#);
- [Programs to assist individuals in earning a livelihood](#);
- [Programs to promote or protect human rights](#);
- [Services related to immigration, including services related to the resettlement of individuals and the safe passage of individuals from one geographic area to another](#); and
- [Operations of a federal minister or department or agency of the Government of Canada that are conducted for a purpose other than one set out in any of the categories above](#).

For more information on these purposes, please click the above links to be directed to the specific section of the Guidance.<sup>9</sup>

## **E. AUTHORIZATION REQUIREMENT INQUIRY**

Upon request, the Public Safety Minister will provide written information to potential applicants to help determine if an authorization is needed under section 83.032 of the Code for conducting specific activities or classes of activities in a particular geographic area. This service is optional for potential applicants.

This process considers the evolving nature of terrorism, allowing for current assessments of terrorist groups and their control over geographic areas. These assessments may change due to the global nature of terrorism, and applicants should submit a new request for information if operational circumstances warrant a review.

For this process, the potential applicant will have to provide:

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<sup>9</sup> See Public Safety Canada, online: <<https://www.publicsafety.gc.ca/cnt/ntnl-scrtr/cntr-trrrsm/hmntrn-xcptn/lgbly-en.aspx>>.

- Contact information for communication purposes;
- Geographical details, including where the proposed activity or activities will occur;
- Identification of any terrorist group suspected of controlling the geographic area where the activity will occur, along with an assessment of the potential risk of unintentionally benefiting the terrorist group;
- Description of the proposed activity or activities that require authorization; and,
- Any other pertinent information deemed relevant to the application process.

To determine if an authorization under section 83.032 of the Code is necessary for activities in a specific geographic area, contact [authorization83.03autorisation@ps-sp.gc.ca](mailto:authorization83.03autorisation@ps-sp.gc.ca).

After receiving guidance from the Public Safety Minister, potential applicants may choose to formally apply under the Authorization Regime to seek protection from criminal liability for conducting or supporting the proposed activities.

## F. APPLICATION PROCESS

### 1. Submission of an application

Applicants must fill out and submit the designated application form,<sup>10</sup> which includes information necessary to evaluate several aspects, such as:

1. Whether the activities are planned for a geographic area controlled by a terrorist group.
2. Whether the activities address a significant and genuine need within that area.

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<sup>10</sup> The applicable form can be found at the following link: <[https://www.international.gc.ca/world-monde/applications-demandes-83\\_03.aspx?lang=eng](https://www.international.gc.ca/world-monde/applications-demandes-83_03.aspx?lang=eng)>.

3. Whether the applicant possesses the capability to manage funds transparently and responsibly, including reporting on fund administration in situations where there is a potential benefit to a terrorist group.
4. Whether the anticipated benefits of the proposed activities outweigh the associated risks.

The application process for authorization under section 83.032 of the Code involves two stages:

1. **Initial Assessment:** The application is initially assessed by the Minister of Foreign Affairs and/or the Minister of Immigration, Refugees and Citizenship to verify that it meets statutory criteria outlined in subsection 83.032(6) of the Code.
2. **Final Assessment and Decision:** Upon referral from the initial assessment, the Public Safety Minister conducts a final assessment, which includes a security review. Information may be shared with entities assisting the Public Safety Minister in administering and enforcing sections 83.031 to 83.0392 of the Code, as listed in subsection 83.038(1).

Each stage evaluates the application against specified conditions.

The Public Safety Minister has the authority to grant authorization to an applicant and its implementing partners for specified activities or transactions to be conducted in areas controlled by a terrorist group.

For a list of information that is generally to be provided, which includes personal information, information on project activities, and information for funds and goods and services, reference can be made to [the Guidance](#).

Information provided in an application, including personal information, may be shared with entities assisting the Public Safety Minister in administering and enforcing sections 83.031 to 83.0392 of the Code, as specified in subsection 83.038(1).

When deciding on an application, the Public Safety Minister assesses whether the benefits of conducting the activity outweigh the risk of terrorist financing. Factors considered include:

1. Referral from the Minister of Foreign Affairs and/or Minister of Immigration, Refugees and Citizenship.
2. Security review outcomes.
3. Measures to mitigate risks and any additional terms and conditions outlined in the authorization.
4. Any other relevant factors deemed appropriate by the Public Safety Minister.

Applicants' personal information is handled in accordance with the *Access to Information Act*, *Privacy Act*, and other applicable laws and directives.

## **G. ASSESSMENT OF THE APPLICATIONS**

To be referred to the Public Safety Minister for further assessment, an application must satisfy the following criteria as evaluated by the Minister of Foreign Affairs and/or the Minister of Immigration, Refugees and Citizenship:

1. Compliance with any requirements outlined in regulations.
2. Involvement of activities planned in a geographic area controlled by a terrorist group, aligning with specified regime purposes.
3. Addressing a genuine and significant need within the geographic area.
4. Submission by an applicant capable of responsibly managing funds in situations involving terrorist groups and providing transparent and accountable reporting on fund administration.

The assessment relies on the information provided in the application form. Additional information or clarification may be requested by the relevant department to complete these assessments.

1. Referral to the Public Safety Minister or refusal of an application

Applicants will receive notification from the Minister of Foreign Affairs and/or the Minister of Immigration, Refugees and Citizenship regarding the outcome of their applications, whether they are refused or referred to the Public Safety Minister for further assessment and decision.

The Ministers may decline an application if it does not meet eligibility criteria, assessment requirements, or the conditions for referral specified in subsection 83.032(6). In such cases, the application will not proceed to further review by the Public Safety Minister, and the applicant will receive a refusal notice within a reasonable timeframe.

Until the application process is completed and an authorization is granted, applicants are not protected from criminal liability for conducting activities. If an application is refused, the Ministers will issue a notice to inform the applicant of this decision.

2. Security assessment

Upon receiving a referral, the Public Safety Minister may initiate a mandatory security review conducted by relevant entities. This review aims to evaluate the potential impact of granting an authorization on terrorism financing and other security considerations before making a decision.

Key factors assessed during the security review include:

1. Whether the applicant or any individuals associated with the proposed activity have ties to terrorist groups.
2. The likelihood that the applicant or individuals involved will act on behalf of, benefit, follow directions from, or associate with a terrorist group during the activity.
3. Whether the applicant or individuals involved have been under investigation or charged with terrorism offences.

The security assessment aims to objectively evaluate the potential impact of granting an authorization on terrorism financing. It relies on factual information and considers the context and complexities of the operating environment. The assessment examines whether the applicant is collaborating with or acting

under the direction of a terrorist group, except when necessary for activities permitted under the regime. In cases where risks are identified, the Public Safety Minister may impose mitigation measures or conditions rather than outright refusal.

Indicators are utilized to assess the risk of terrorist financing that organizations may face. These indicators encompass factors such as the general terrorism and terrorist financing threat environment, available domestic intelligence on threats, and credible open-source information on connections between the organization and terrorist entities. While indicators alone may not imply suspicious financial or criminal activity, their cumulative presence, alongside other factors, can heighten concerns about terrorist financing or necessitate additional monitoring and due diligence by the Public Safety Minister.

The Public Safety Minister may request additional information from the applicant within a specified timeframe. Failure to comply without a reasonable explanation may result in the application being considered withdrawn.

Decisions to refuse an application are grounded in facts established during the security review process. Applicants denied authorization at this stage can take further steps outlined in *Refusal of an Application*, below.

For updates on application status, applicants can contact [authorization83.03autorisation@ps-sp.gc.ca](mailto:authorization83.03autorisation@ps-sp.gc.ca).

### 3. Decision by the Public Safety Minister and delivery of authorization to the applicant

After completing the assessment process, applicants will receive notification regarding whether an authorization will be granted or refused. The Public Safety Minister may decide to grant an authorization if satisfied that:

1. There is no feasible alternative to conducting the proposed activity without posing a risk of terrorist financing.
2. The benefits derived from the proposed activity outweigh the identified risks.

The risk/benefit evaluation takes into account:

- Recommendations from the Minister of Foreign Affairs and/or Minister of Immigration, Refugees and Citizenship regarding the necessity of the proposed activity in the specified region and the applicant's capability to manage funds in contexts involving terrorist groups, among other considerations.
- Findings from the security review.
- Any implemented measures to mitigate risks and any additional terms and conditions specified in the authorization.
- Other relevant factors deemed appropriate in the assessment.

Key points regarding decisions made by the Public Safety Minister include:

- **Validity Period:** An authorization can be valid for up to five years, with the specific duration stated in the authorization itself.
- **Statutory Instruments Act:** Authorizations are exempt from the *Statutory Instruments Act* and are not made public.
- **Scope of Authorization:** The authorization extends not only to the individuals or organizations named in it but also to any other persons involved in carrying out activities on their behalf and in accordance with the authorization.
- **Non-compulsory Nature:** An authorization does not compel any party, including financial institutions handling transactions, to take action. It solely shields the authorized parties from potential criminal liability under subsection 83.03(2) of the Code for providing assistance that might otherwise breach this provision.
- **Due Diligence:** Recipients of an authorization are still obligated to conduct sufficient due diligence as required by domestic and international obligations, despite being authorized.

#### 4. Refusal of an application

If an application for an authorization is refused, the Public Safety Minister will provide the applicant with reasons for the refusal. The Minister may decline an application for the following reasons:

- The proposed activities do not meet the criteria specified for application.
- National security concerns exist.
- Other factors considered relevant by the Minister in the circumstances.

Following a refusal, an applicant has several options:

- They can re-apply after 30 days from the date of the decision, including any new or additional information that addresses the reasons for refusal.
- They may re-apply before the 30 days if they can demonstrate to the Minister who issued the refusal that there has been a significant change in circumstances.
- If the refusal was issued by the Minister of Foreign Affairs or the Minister of Immigration, Refugees and Citizenship, the applicant must address the criteria mentioned in the refusal letter.
- If the Public Safety Minister issued the refusal and acknowledges a material change in circumstances, they may reconsider the application based on the previous referral from the other Ministers.
- The applicant also has the option to challenge the decision in the Federal Court of Canada.

#### H. REPORTING AND MONITORING OF COMPLIANCE

Once an authorization is granted, authorization holders must adhere to the following obligations:

- **Reporting Obligations:** Authorization holders are required to promptly report any new information, such as changes or additions to persons covered by the authorization (including



implementing partners or third-party service providers), changes in principals, addresses, contact details, financial information, or any amendments to the original approved application.

- **Further Assessment:** The Public Safety Minister may conduct additional assessments upon receiving new information while the authorization is in effect. If this information reveals a risk, the Minister may decide to suspend, restrict, or revoke the authorization. Failure to proactively disclose changes may result in revocation.
- **Compliance Responsibility:** Authorization holders are responsible for ensuring that their activities in areas controlled by terrorist groups align with the authorization's scope and comply with its terms and conditions.
- **Record-Keeping Requirements:** All authorizations mandate the maintenance of accurate, complete, and legible records for a minimum of five years, whether in paper or electronic format, documenting any activity covered by the authorization.
- **Specified Reporting Requirements:** Specific reporting obligations may be included in the authorization, determined on a case-by-case basis. These requirements serve to verify compliance with the terms and conditions stipulated in the authorization.

Authorization holders under section 83.032 of the Code must fulfill reporting requirements regarding the transfer of goods/property/services by providing detailed information and supporting evidence to Public Safety Canada. This typically includes:

- **Details of Transfers:** Reporting the amounts of property, financial resources, or other related services transferred that could potentially benefit a terrorist group.
- **Payment/Shipment Route:** Describing the route used for the payment or shipment involved in the transfer.
- **Transfer Date:** Noting the date on which the property, financial resources, or services were transferred.

Authorization holders can obtain specific reporting forms and detailed requirements by contacting [authorization83.03autorisation@ps-sp.gc.ca](mailto:authorization83.03autorisation@ps-sp.gc.ca).

Once granted, authorization holders are obligated to adhere to all terms and conditions specified in their authorization. The Public Safety Minister retains the authority to take the following actions regarding an authorization:

1. **Suspension, Revocation, or Restriction:** The Minister may suspend, revoke, or restrict the scope of an authorization if:
  - The authorization holder fails to comply with its terms and conditions.
  - The authorization holder fails to fulfill reporting requirements or provide requested additional information.
  - The Minister determines that the benefits of conducting the authorized activity no longer outweigh the risk of terrorist financing.
2. **Specific Conditions and Mitigation Measures:** Each authorization will outline specific conditions, mitigation measures, and reporting requirements tailored to the authorized activity. These are designed to manage and minimize risks associated with the authorized activities.
3. **Government Funding Compliance:** Organizations implementing activities funded by a Government of Canada department must also adhere to reporting requirements outlined in their funding agreements.

## I. PERIODIC SECURITY REVIEW

Authorization holders may undergo periodic updates of the security review concerning any individual or organization covered by the authorization. This review aims to assess whether:

- **Links to Terrorist Groups:** There are connections between an individual or organization and a terrorist group.

- **Association with Terrorist Groups:** An individual or organization is acting on behalf of, for the benefit of, or in association with a terrorist group.
- **Administrative Capability:** There are indications that an individual or organization lacks the capability to administer funds in circumstances involving terrorist groups, or to report on that administration in a transparent and accountable manner.

New information provided through reporting requirements will be evaluated to determine any of these factors. Authorization holders seeking guidance on reporting forms and requirements can contact [authorization83.03autorisation@ps-sp.gc.ca](mailto:authorization83.03autorisation@ps-sp.gc.ca).

## J. AMENDMENT, REVOCATION OR SUSPENSION

Authorization holders have the ability to request amendments to their granted or renewed authorizations, provided the proposed changes do not fundamentally alter the essential nature or purpose for which the authorization was initially granted. Requests for amendments should be promptly submitted to Public Safety Canada through [authorization83.03autorisation@ps-sp.gc.ca](mailto:authorization83.03autorisation@ps-sp.gc.ca), accompanied by comprehensive supporting information.

It is recommended that if multiple amendments are necessary for a single authorization, they should be consolidated into a single request for efficiency.

Authorization holders bear the responsibility of identifying any required amendments and promptly submitting requests accordingly. The Public Safety Minister retains the authority to suspend, revoke, or restrict the scope of an authorization if:

- The authorization holder fails to comply with its terms and conditions.
- There is a failure to meet reporting requirements or provide requested information for additional security reviews without reasonable justification.
- The Minister determines that the conditions initially met for granting the authorization are no longer satisfied, particularly regarding the balance of benefit versus risk related to terrorist financing.

## K. RENEWAL OF THE APPLICATION

To renew an authorization before it expires, applicants must submit a renewal request to [authorization83.03autorisation@ps-sp.gc.ca](mailto:authorization83.03autorisation@ps-sp.gc.ca) prior to the authorization's expiry date.

If an authorization expires, the Public Safety Minister may still renew it if exceptional circumstances justify why the renewal application was not submitted before expiry. However, the shield from criminal liability provided by the authorization ceases upon expiry and only resumes from the date the renewal is granted.

Renewal applications necessitating exceptional circumstances should also be directed to [authorization83.03autorisation@ps-sp.gc.ca](mailto:authorization83.03autorisation@ps-sp.gc.ca). If no exceptional circumstances exist, applicants must submit a new authorization application.

## L. FAILURE TO COMPLY

Failing to adhere to the terms and conditions of an authorization can lead to its revocation, suspension, amendment, or termination.

An authorization shields individuals and organizations from criminal liability for activities that might otherwise violate subsection 83.03(2) of the Code. The Guidance reminds that non-compliance with the authorization could constitute an offence under this section, punishable by up to 10 years in prison if convicted.

## M. CONCLUSION

The publication of the Guidance is the long-awaited step that was required in order to implement the Authorization Regime that had otherwise been held in abeyance since Bill C-41 was passed into law a year ago in June 2023. However, the complexity of the application process under the Authorization Regime, the very stringent compliance requirements, as well as the limited nature of the authorization once granted, may mean that some charities and NFPs that might otherwise qualify for an authorization may be reluctant to apply in the first place, at least at the initial startup of the Authorization Regime.

The Guidance does provide some helpful context in understanding the requirements of claiming the Humanitarian Assistance Exception. However, what the Guidance does have to say about that Exception

is non-binding and primarily consists of cross references to international conventions and protocols in attempting to explain the nuances of an exemption from prosecution under the Code. This is not a very satisfactory way for charities and NFPs that might otherwise be interested in utilizing the Humanitarian Assistance Exception to proceed and may mean that some charities and NFPs may be reluctant to do so because of the uncertainty that the exemption involves.

In addition to having to worry about whether a charity or NFP falls within one of the two exemptions in Bill C-41 in order to avoid potential criminal liability, charities that decide to rely upon one or both of the exemptions may also be required by the Charities Directorate of the Canada Revenue Agency to keep detailed books and records concerning all aspects of the exemption that the charity is claiming in compliance with the books and record requirements in subsection 230(2) of the *Income Tax Act* in order to maintain their status as a registered charity, separate and apart from what is required for purposes of compliance with the applicable exemption under the Code. This may prove difficult to do with regard to the Humanitarian Assistance Exception in subsection 83.03(4) if called upon to prove to the satisfaction of the Charities Directorate that the charity has been “using reasonable efforts to minimize any benefit to terrorist groups”. Only time will tell about how stringent the Charities Directorate may be in this regard.

In the meantime, for those charities and NFPs that may be interested in pursuing either or both the Authorization Regime or the Humanitarian Assistance Exception under Bill C-41, a careful review and understanding of the complexities and limitations of the Guidance will be essential in conjunction with advice from legal counsel for the organization.



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