



Home Office

FOR INFORMATION NOTE: OPERATING WITHIN COUNTER- TERRORISM LEGISLATION

While this note has been drafted primarily for International Non-Governmental Organisations it has relevance to other sectors.

Does counter-terrorism legislation prevent organisations from operating overseas?

- A. No, in HM Government's assessment existing terrorism (or other) legislation does not prevent organisations, including non-governmental organisations (NGOs), from operating overseas, including in areas where terrorist groups operate. This can involve very finely balanced judgments for non-governmental organisations, but this is an inherent risk for any organisation operating in high threat areas overseas. It remains the responsibility of non-governmental organisations or other parties to ensure that their activity complies with UK law and to take reasonable steps to reduce the risk of non-compliance.

PROSECUTION

Will I be prosecuted in the UK as a result of my involvement in legitimate humanitarian or conflict resolution work?

- A. The risk that an individual or a body of persons corporate or unincorporated will be prosecuted for a terrorism offence as a result of their involvement in humanitarian efforts or conflict resolution is low.

Has anyone involved in legitimate humanitarian or conflict resolution work been prosecuted for a terrorism offence?

- A. We are not aware of any recent UK prosecutions of NGOs or their staff for terrorism offences.

Who makes the decision to prosecute?

- A. Prosecution decisions are taken independently of Government and will be made on a case by case basis depending on the particular facts and circumstances. More generally, it is important to recognise that any potential prosecution would have to go through a number of stages before a decision to prosecute was made:
- Police identify that a crime may have been committed;
 - Police decide whether or not to investigate;
 - Police investigate and, if they consider that there is sufficient evidence to charge, refer the case to the Crown Prosecution Service;
 - Crown Prosecution Service consider whether there is sufficient evidence to prosecute;
 - Crown Prosecution Service consider whether a prosecution is required in the public interest (in line with the Code for Crown Prosecutors (http://www.cps.gov.uk/publications/code_for_crown_prosecutors/));
 - If the offence requires the consent of the Attorney General (as many offences under the terrorism legislation which concern the affairs of another country do) the Crown Prosecution Service refer the case to the Attorney General; and
 - The Attorney General decides whether the prosecution should proceed, considering the sufficiency of evidence and the public interest in bringing proceedings.

Why doesn't the Government make staff of NGOs exempt from prosecution for terrorism offences if the activity takes place in the course of their humanitarian or conflict resolution work like in some other countries?

- A. We have looked at the legislative concessions made by another country but consider that these would not translate to the UK given our international obligations. On 17 October 2014, the US Treasury issued guidance related to the provision of humanitarian assistance by not-for-profit non-government organisations authorities but it included the caveat that '[the] guidance is provided for informational purposes and does not have the force of law. The legal provisions of US sanctions are set forth in applicable statutes and regulations which are legally binding and govern the activities described in [the] guidelines'. We assess that introducing a specific exemption for humanitarian and/or conflict resolution work would create a loophole that could be exploited by unscrupulous individuals and leave NGOs vulnerable to abuse.

The Code for Crown Prosecutors explains how prosecutors determine whether a person should be prosecuted and requires prosecutors to consider the seriousness of the offence, the culpability of the alleged offender and the harm caused when determining whether a prosecution is required in the public interest. The requirement that the Attorney General gives consent to prosecutions provides an additional safeguard to ensure that the public interest in prosecution is scrutinised. There is no evidence that prosecutions for terrorism offences are being pursued against staff of non-governmental organisations as a result of their humanitarian or conflict resolution work and, therefore, no need to create any separate guidance or change of law that would see such organisations being treated differently.

How can NGOs reduce the risk that their staff will be prosecuted?

- A. Guidance for charities and non-governmental organisations is available from a range of sources. There is a range of guidance on managing the risks of operating overseas, abuse of resources for terrorist purposes and links or associations to terrorist activity. Advice is also available on the requirements under UK counter-terrorism and charity law. For example, the guidance includes that produced by the Charity Commission (<https://www.gov.uk/government/collections/protecting-charities-from-harm-compliance-toolkit>), the Disasters Emergency Committee and the Humanitarian Practice Network. Guidance is kept under review.

ASSET FREEZES AND PROSCRIPTION

PERSONS AND ENTITIES WHO'S ASSETS ARE FROZEN

What is the purpose of an asset freeze?

- A. For those regimes concerned with counter-terrorist financing, including the regime under the UK's Terrorist Asset Freezing etc. Act 2010 ("the 2010 Act"), the EU's Council Common Position 931 external terrorism regime (CP 931) and the UN Al Qa'ida regime, the purpose of the asset freeze is to prevent funds from being used or diverted for terrorist purposes.

For other international sanctions regimes, the aims are generally to influence the behaviour of the targets of the sanctions by increasing the cost of doing business, denying them access to resources needed for the unwelcome behaviour, and to send a broader political message condemning the target's behaviour. In Syria, the aims of sanctions are to degrade Assad's ability to wage war on his people and pressure the regime into reassessing its position and reengaging in negotiations with the moderate opposition.

Where can I find the lists of persons and entities subject to an asset freeze in the UK?

- A. HM Treasury produce a consolidated list of persons (individuals and entities) <https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets> subject to an asset freeze in the UK, this includes individuals and entities designated under the UN Al Qa'ida sanctions regime, CP 931 and the UK domestic terrorist asset freezing regime. The consolidated list also includes all the other asset freezes targets subject to financial sanctions in the UK, including, for instance, Iran (Nuclear Proliferation), Ukraine (Sovereignty) etc. The list of current financial sanctions regimes in force in the UK is given at <https://www.gov.uk/government/collections/financial-sanctions-regime-specific-consolidated-lists-and-releases>.

How can I keep up to date with changes to the list of persons subject to an asset freeze?

- A. Anyone can subscribe to alerts issued by HM Treasury on updates to the list via the following link: <https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets>

Are there circumstances in which funds or economic resources may be made available to a person or entity who is subject to an asset freeze?

- A. A licence is a written authorisation from HM Treasury to exempt certain activity, which would otherwise be prohibited, from the scope of an asset freeze. For example, making funds or economic resources available to a designated person. Licensing regimes vary depending on their legal basis (i.e. whether licensing grounds are codified at a UN, EU or domestic level), but generally speaking they help to mitigate the impact of an asset freeze on certain aspects of a designated person's life, whilst still ensuring that funds cannot be diverted for terrorist purposes or to support activities such as human rights violations and nuclear proliferation.

The regimes allow for the imposition of licensing conditions. These may include, for example, reporting requirements (such as the provision of receipts and bank statements) to ensure that the funds are used in accordance with the activities authorised under the licence.

Can licences be issued to cover payments to be made overseas?

- A. It would be unusual under counter terrorism sanctions regimes. Licences usually cover payments within the UK, where terrorist financing risks can be more easily managed. Whilst HM Treasury has, on occasion, licensed funds to be remitted overseas, this has only been done where HM Treasury has been able to satisfy itself that the risk of the funds being used for terrorism can be mitigated. In other cases licences have been refused.

Under international sanctions regimes, licences may permit the unfreezing of funds or the making available of funds to designated persons inside or outside the UK. EU international sanctions generally apply to any legal or natural person in respect of any business operating at least partially within the EU, as well as any EU national or legal person incorporated in the EU operating anywhere. Licences may cover activities by any of these parties either inside or outside the EU.

What is prohibited by a designation under the asset freezing regimes in place in the UK?

A. Asset freezing regimes comprise two elements:

- A prohibition on dealing with the funds or economic resources belonging to or owned, held or controlled by a designated person, and
- A prohibition on making funds or economic resources available, directly or indirectly, to or for the benefit of a designated person.

In the 2010 Act funds are defined at s.39 as “*financial assets and benefits of every kind*,” with further detail on scope set out therein. Similarly, economic resources are defined in the same section as: “*assets of every kind, whether tangible or intangible, movable or immovable, (such as goods, property, or rights) which are not funds themselves but can be used to obtain funds, goods or services.*” This information is also set out in HM Treasury FAQs on gov.uk for the purposes of other financial sanctions regimes. Where an item falls within these definitions it is prohibited to make this item available to the designated person. In any interactions with designated persons, NGOs and others must consider if their activity is prohibited. For example, simply meeting with a designated person, or providing them with a meal or a drink is unlikely to fall within the prohibitions whereas paying funds to the designated person or repaying a debt on their behalf are among the prohibitions that would apply.

What are the procedures to report diversion of assets to designated entities?

A. There is guidance available on due diligence processes and procedures to report diversion of assets to designated entities:

- The Charity Commission’s guidance includes the ‘Protecting charities from harm’ toolkit. Key chapters are:
 - a) Chapter 1: Charities and Terrorism – Implications For and Legal Requirements on Charities Arising from UK Counter Terrorism Law and Charity Law, including Reporting Diversion; and
 - b) Chapter 2: Due Diligence, Monitoring and End Use of Funds.

Where can I find out more information about compliance with financial sanctions regimes and licensing requirements?

A. There is guidance available on how to comply with financial sanctions regimes and licensing requirements at:

- Treasury Financial Sanctions FAQs (<https://www.gov.uk/government/publications/financial-sanctions-faqs>) which also includes information on the licensing regime;
- The Financial Service Authority report “Financial Services Firms approach to UK financial sanctions” (<http://www.fca.org.uk/static/fca/documents/fsa-sanctions-final-report.pdf>); and
- The Joint Money Laundering Steering Group (JMLSG) guidance “Compliance with the UK financial sanctions regime” (www.jmlsg.org.uk/download/8203).

PROSCRIPTION

What is a proscribed organisation?

A. A proscribed organisation is one that is included in the list of proscribed organisations in Schedule 2 to the Terrorism Act 2000, or which is referred to in an Order made under section 3(6) of that Act, specifying an alternative name for a group listed in Schedule 2. The Home Secretary can proscribe an organisation if he believes that it is concerned in terrorism as defined by section 3(5) of the Terrorism Act 2000. The organisation is added to the list of proscribed organisations by way of an Order that must be agreed by both Houses of Parliament.

Where can I find the list of proscribed terrorist organisations?

A. The list of proscribed organisations can be found at:
<https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2>.

Why doesn't the Government produce a single list covering persons and entities subject to an asset freeze and proscribed organisations?

A. The asset freezing regime and proscription regime impose different restrictions upon the organisations and those who interact with them. Therefore, it is not appropriate to combine the lists.

Why don't the lists of persons and entities subject to an asset freeze or the list of proscribed organisations include persons and organisations designated by other countries?

A. It does but only if they are also listed in the UK. It is only appropriate for HM Government to issue lists of individuals and entities subject to restrictions in the UK.

Do the proscription offences apply to all designated and proscribed organisations?

A. No, the proscription offences set out in sections 11 to 13 of the Terrorism Act 2000 (as amended made by the Counter Terrorism and Border Security Act 2019) apply in relation to proscribed organisations i.e. those specified in Schedule 2 to the Terrorism Act 2000 or which is referred to in an Order made under section 3(6) of that Act, specifying an alternative name for a group listed in Schedule 2. These offences do not apply in relation to groups

subject to other designations or sanction regimes such as an asset freeze in the UK as a result of a UN Al Qa'ida, EU CP 931 or UK domestic, asset freeze unless that entity is also proscribed in the UK.

What are the offences relating to a proscribed organisation?

- A. Section 11 of the Terrorism Act 2000 makes it an offence to be a member of a proscribed organisation. Section 12 makes it an offence to invite support for a proscribed organisation; express an opinion or belief that is supportive of a proscribed organisation, reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation; or to arrange, manage or assist in arranging or managing a meeting in support of a proscribed organisation. Section 13 makes it an offence to wear clothing, carry or display articles in public in such circumstances as to arouse reasonable suspicion that an individual is a member or supporter of a proscribed organisation; or to publish an image of an item of clothing or other article, such as a flag or logo in the same circumstances.

Do the offences relating to a proscribed organisation apply overseas?

- A. Yes. The section 11 offence of membership of a proscribed organisation has had extra-territorial jurisdiction since 2006. From 12 April 2019, the section 12 and 13 offences of inviting or recklessly expressing support for a proscribed organisation, and the offences of displaying or publishing articles, also have extra-territorial jurisdiction for British nationals and UK residents. The offences do not prevent non-governmental organisations interacting with proscribed organisations overseas although, of course, we would encourage compliance with the Charity Commission's guidance on conduct etc.

Is it an offence to arrange or manage a meeting with a proscribed organisation?

- A. Section 12(2) of the Terrorism Act 2000 provides that it is an offence to arrange or manage (or assist in the arrangement or management) of a meeting in the knowledge that it is to support a proscribed organisation, to further the activities of a proscribed organisation, or, is to be addressed by a person who belongs or professes to belong to a proscribed organisation. It is also an offence under section 12(3) to address a meeting if the purpose of the address is to encourage support for a proscribed organisation or to further its activities. However, section 12(4) provides a defence, in the case of a private meeting addressed by a member of a proscribed organisation, if a person can prove that they had no reasonable cause to believe that the address would support the proscribed organisation or advance its terrorist activities.

Further, the explanatory notes to the Terrorism Act 2000 explain that the defence in section 12(4) is intended to permit the arrangement of 'genuinely benign' meetings. The explanatory notes are designed to provide clarification of the legislation's intent and can be taken into account by the prosecuting authorities when considering whether prosecution is in the public interest and by courts in interpreting Parliament's intentions. A 'genuinely benign' meeting is interpreted as a meeting at which the terrorist activities of the group are not promoted or encouraged, for example, a meeting designed to encourage a designated group to engage in a peace process or facilitate delivery of humanitarian aid where this does not involve

knowingly transferring assets to a proscribed organisation.

KIDNAP FOR RANSOM FOR TERRORISM

Is it permissible to make ransom payments from private or an organisation's funds?

- A. No. Sections 15-18 of the Terrorism Act 2000 create a number of offences related to the financing of terrorism. It is an offence to invite another to provide money, to receive money, to provide money, to possess money or to enter into an arrangement whereby money is made available, if you know or have reasonable cause to suspect that it may be used for the purposes of terrorism.

In addition, section 19 provides for a requirement to disclose a belief or suspicion that a terrorist finance offence has occurred based on information that comes to a person's attention during the course of their employment, trade, profession or business. A disclosure of a belief or suspicion of a terrorist offence can be made to the National Crime Agency or a police officer. Terrorist finance offences have extra-territorial effect, so an action committed overseas can result in prosecution in the UK.

The Charity Commission guidance on the UK's counter terrorism legislation, including legislation relating to the financing of terrorism, can be found at:

<https://www.gov.uk/government/publications/charities-and-terrorism>.

NCA guidance on reporting suspicious activity can be found at:

<http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/economic-crime/ukfiu/how-to-report-sars>.

In limited circumstances, financial institutions may seek consent from the NCA for a transaction i.e. confirmation that it will not breach terrorist finance legislation. NCA guidance on how to obtain consent for a transaction can be found at:

<http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/economic-crime/ukfiu/seeking-consent-for-financial-transactions>.

Is it permissible for a ransom payment to be reimbursed through an insurance policy?

- A. No. The Terrorism Act 2000 now explicitly provides that an insurer commits an offence if they make a payment under an insurance contract for money or property handed over in response to a demand made wholly or partly for the purposes of terrorism, when the insurer knows or has reasonable cause to suspect that the money has been handed over for that purpose. This provision has extra-territorial application and therefore applies to insurance payments made outside of the UK.

EXPORT LICENCES

Can I export or trade overseas in military goods, sensitive ‘dual-use’ items and other goods and services subject to trade sanctions?

A. You would require a licence. The Export Control Organisation (ECO) in the Department for Business Innovation and Skills operates the licensing regime for exports of, and overseas trade in, military goods, sensitive “dual-use” items (i.e. civilian items which also have military applications), and for goods and services subject to trade sanctions. The licensing regime seeks to ensure that such items are not transferred where they may provoke or prolong conflict, be used for internal repression, pose a threat to national security, or be in breach of any of the UK’s international obligations or commitments.

How do I apply for an export licence?

A. Licence applications should be submitted to the ECO through the SPIRE online licensing system. Applicants must provide a full and clear description of the items to be exported, details of the consignee and end-user of the goods, and a description of the intended end-use. The ECO aims to process 70% of applications within 20 working days although this target may be exceeded where the destination country is subject to sanctions, is suffering conflict or instability.

Where I can I find out more about export licences?

A. Further information about the controls, including the lists of goods for which a licence is required and guidance on the licence application process, is available from <https://www.gov.uk/government/organisations/export-control-organisation>.

WITHDRAWAL OF FINANCIAL SERVICES

Is the Government aware of the risk of financial services being withheld or withdrawn from non-governmental organisations and others?

A. The Government is aware that a number of individuals and organisations, including non-governmental organisations, have concerns that financial services providers have withdrawn or restricted their banking services. This appears to be more common for non-governmental organisations operating in areas where terrorist groups operate. The Financial Conduct Authority has publicly issued a statement to clarify any regulatory uncertainty on the part of banks which inhibit the provision of banking services to the sector: <https://www.fca.org.uk/about/what/enforcing/money-laundering/derisking>.

Why doesn't the Government make banks and other financial institutions provide financial services to non-governmental organisations?

- A. The Government acknowledges the negative impact that account closures or the restriction of services can have on the good work that many non-governmental organisations seek to do. In individual cases neither the Government nor regulators can compel banks or other financial institutions to offer an account to a particular customer. Decisions taken by banks are private and taken in accordance with their risk appetite and compliance with legal and regulatory requirements. However, HM Government is committed to ensuring that the anti-money laundering and counter-terrorist financing regulations are applied in an effective and proportionate manner and in such a way that they do not compromise other government priorities.

What action is being taken to ensure financial services remain available to non-Governmental organisations and others?

- A. The Financial Action Task Force is producing a best practice paper for financial institutions on how they can best assess and take proportionate measures to prevent the terrorist abuse of NGOs. The non-governmental organisations sector, supported by the Charity Commission, are leading work to agree a set of good practice standards and share this with banks to reassure them of the due diligence non-governmental organisations conduct on their overseas operations.

What should anyone facing difficulty in processing payments or maintaining their bank services do?

- A. The individual or organisation should engage proactively with their bank at the earliest possible stage and provide information about their desired transactions, including how the ultimate use of the funds will be monitored. It may also be helpful for NGOs to demonstrate their existing due diligence processes as the bank may be unaware of these.

April 2019