HM TREASURY

# Public consultation:

## draft terrorist asset-freezing bill

**Cm** 7852

**March** 2010


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# draft terrorist asset-freezing bill

Presented to Parliament by
Exchequer Secretary to the Treasury
by Command of Her Majesty

March 2010

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# 1 Introduction

1.1 Measures to prevent terrorist finance are at the heart of the international effort against terrorism. Without resources, terrorist networks are unable to plan, organise or execute attacks.

1.2 For this reason, the United Nations Security Council has established two terrorist asset freezing regimes which all member states are obliged under international law to implement:

- the first is against Al-Qaida and the Taliban (established under UN Security Council Resolution 1267, 15 October 1999), where a specially created Committee of the UN names those persons to whom all UN member states are to apply asset freezes; and
- the second is against individuals involved in terrorism (established under UN Security Council Resolution 1373, 28 September 2001), where targeting is left to individual states, with the freezes only applying within their jurisdiction.

1.3 It is the second regime which is the subject of this consultation.

1.4 The UNSCR 1373 (2001) asset freezing regime is currently implemented in the United Kingdom under the Terrorism (United Nations Measures) Order 2009 and its preceding Orders in Council made in 2001 and 2006. Measures to implement this regime must be proportionate, taking due account of the human rights of the individuals concerned, but they must also be robust to ensure that the risk of terrorist financing is minimised.

1.5 The Terrorism Orders were made under section 1 of the United Nations Act 1946, which gives a power to make, by Orders in Council, such provisions as appear to be necessary or expedient for enabling measures in certain United Nations decisions to be effectively applied.

1.6 On 27 January 2010 the Supreme Court handed down a judgment in which it ruled that the Terrorism Order 2006 went beyond the scope of section 1 of the United Nations Act 1946 and should be quashed.

1.7 The Supreme Court made an Order quashing the Terrorism Order 2006 on 4 February 2010. The effect of the quashing of the Terrorism Order 2006 was that directions made in respect of a number of persons which had resulted in assets being frozen were void. The Supreme Court indicated that the Terrorism Order 2009 was vulnerable to being quashed on the same basis as the Terrorism Order 2006.

1.8 In order to prevent a gap in the terrorist asset freezing regime that would have resulted in funds being returned to suspected terrorists, the Government brought forward fast-track legislation to maintain the asset freezing regime. The Terrorist Asset-Freezing (Temporary Provisions) Act was passed on 10 February 2010. The Act deems the Terrorism Orders to have been validly made and decisions made under them to have legal effect for the period from 10 February 2010 to 31 December 2010. The Government published a draft Terrorist Asset-Freezing Bill on 5 February, which – subject to Parliamentary approval – it intends to introduce and pass before the end of the year to replace the Terrorist Asset-Freezing (Temporary Provisions) Act and to provide a durable and effective framework for meeting the UK's obligations under UNSCR 1373 (2001) to freeze the assets of those involved in terrorism.

1.9 The Supreme Court also quashed the Al-Qaida and Taliban (United Nations Measures) Order 2006, an Order made under section 1 of the United Nations Act 1946 to give effect to the

obligations contained in UNSCR 1267 (1999) and other UN obligations in respect of Al-Qaida and the Taliban. This consultation and the draft legislation annexed to it do not cover the United Kingdom's asset freezing obligations in respect of Al-Qaida and the Taliban. These obligations are proposed to be addressed by Regulations under section 2(2) of the European Communities Act 1972.[1]

1.10 The Government is committed to ensuring that there is full and effective scrutiny of its draft asset freezing legislation. As such, it is launching this public consultation exercise to seek the views of interested parties and the general public on our proposed approach to terrorist asset freezing. In particular, the Government is interested in responses to the following questions:

- does the draft Bill set out the most effective way of meeting our UN obligations and protecting national security whilst also ensuring sufficient safeguards in respect of human rights?
- do you have any views on the current operation of the UK's asset freezing regime under the Terrorism Orders?
- does the Regulatory Impact Assessment (at Annex C) accurately reflect the costs and benefits of the regime? Is there more that can be done to reduce the costs for the financial sector and others in implementing the regime whilst maintaining its effectiveness?

[1] See http://www.opsi.gov.uk/si/si2010/draft/ukdsi_9780111496336_en_1

# 2 UK approach to counter-terrorist finance

2.1 Terrorism remains a significant threat. On 22 January 2010 the Home Secretary announced that the Joint Terrorism Analysis Centre had raised the UK terrorist threat level to "severe", meaning that an attack on the UK is highly likely and could occur without further warning.

2.2 Terrorists need finance. The sums required for an operation vary: the attacks in New York and Washington on 11 September 2001 are estimated to have cost US$500,000; the 7/7 London attacks and the Madrid train bombings cost less (c. £8,000 and US$10,000 respectively); and an improvised explosive device in Iraq costs about US$100.

2.3 Terrorist organisations also need money to sustain their networks. The sums required here may be much greater. The capability and the plans of terrorist organisations, including Al Qaida, have been hampered by lack of funding.

2.4 Terrorist organisations raise funds by engaging in criminal activity (ranging from credit card fraud to extortion, drugs trafficking and kidnapping), from donations (often from a few wealthy individual donors) and by the diversion of funds raised for other purposes (including by and for charities or quasi-charitable bodies).

2.5 Countering terrorist finance means not only disrupting terrorist cells but also the work of their support and facilitation networks, including those who radicalise people to support terrorism and violent extremism.

2.6 "The financial challenge to crime and terrorism" launched jointly by the Home Office, HM Treasury, the Foreign and Commonwealth Office and the Serious Organised Crime Agency (SOCA) in February 2007, set out for the first time how the public and private sector would come together to deter terrorists from using the financial system, detect them when they did, and use financial tools to disrupt them.[2] The Government's aim is to deprive terrorists and violent extremists of the financial resources and systems needed for terrorist-related activity, including radicalisation.

2.7 Since then, the coordination of cross-Government work to counter the financing of terrorism has become an integral part of the Government's wider strategy for countering international terrorism, or CONTEST, published in March 2009.

2.8 Action against terrorist finance includes safeguards to prevent terrorists using common methods to raise funds, or using the financial system to move money. Financial intelligence and financial investigation tools are used to support all counter-terrorist investigations.

## Other counter-terrorist finance tools

2.9 The Government has a comprehensive framework of counter-terrorism tools and powers. This includes asset freezing, but also covers a number of other measures to identify, investigate, and disrupt the financing of terrorism:

- tools to identify and report suspicious financial activity;

[2] http://www.hm-treasury.gov.uk/d/financialchallenge_crime_280207.pdf

- financial investigation by law enforcement and security and intelligence agencies;
- prosecution powers to arrest and detain individuals involved in terrorist finance and to confiscate assets that are the proceeds of crime or are used for terrorist purposes;
- international action, using diplomatic and law enforcement links to ensure trans-national networks are investigated and disrupted; and
- the potential to introduce financial restrictions under the Counter-Terrorism Act 2008 in relation to other jurisdictions that pose a risk of money laundering, terrorist finance or proliferation of weapons of mass destruction that pose a significant risk to the UK national interest.

2.10 Section 1 and Schedule 1 of the Anti-terrorism, Crime and Security Act 2001 (ATCSA) allow the police to seize and detain cash where they have reasonable suspicion that the funds are intended to be used for terrorism, are the proceeds of acts carried out for the purposes of terrorism, or belong to a proscribed organisation. The definition of cash includes coins and notes of any currency, postal orders, cheques of any kind, and such other monetary instruments as the Secretary of State may specify by Order. The cash can only be detained for 48 hours, unless the court believes its continued detention is justified, in which case it can be detained for up to two years and eventually forfeited.

2.11 Sections 15-18 of the Terrorism Act 2000 (TACT) outline the principal offences connected to the financing of terrorism. The offences include possessing, providing, inviting others to provide, or receiving money or other property where the person knows or has reasonable cause to suspect that the money or property will or may be used for the purposes of terrorism. It is also an offence to enter into or become concerned in an arrangement as the result of which money or other property is made available for the purposes of terrorism, and to conceal or launder terrorist property. In this context, "the purposes of terrorism" includes action for the benefit of a proscribed organisation, and "terrorist property" includes the resources of a proscribed organisation.

2.12 Section 23 of TACT allows a court to order the forfeiture of any money or other property which had been used for the purposes of terrorism, or which was intended to be used for the purposes of terrorism, following a conviction for a terrorist finance offence under one of sections 15-18 of the Terrorism Act 2000. Section 23A of the Terrorism Act 2000 extends the court's forfeiture powers to cases where there are convictions for other specified terrorism offences and offences with a terrorism connection.

2.13 In addition to the offences connected to financing terrorism referred to above, there is an obligation under TACT to report any suspicions that money may be made available for terrorist purposes or a terrorist finance offence has been committed. This is called the Suspicious Activity Reporting (SAR) regime. Many SARs are filed after a transaction has occurred, but where a person (e.g. a financial institution) suspects a particular transaction is related to terrorist financing, they must seek consent prior to that transaction from SOCA. Under section 21ZA of TACT, they may only proceed with that transaction provided either (a) SOCA gives consent; or (b) SOCA does not notify the person within seven days that consent is refused. Should a person continue with the transaction or arrangement following a refusal by SOCA to give consent, they may face criminal liability.

2.14 The consent element of the SAR regime is in place to initiate or assist an ongoing investigation leading to executive action (such as a cash seizure or an application for a court order to restrain the funds, whilst further legal action, such as a criminal prosecution for terrorist financing, proceeds).

2.15 The Proceeds of Crime Act 2002 puts in place measures to allow the confiscation of assets that are the proceeds of crime.

2.16 Whilst these are all important tools to deal with the threat posed by terrorist and other illicit finance, these measures do not fulfil the obligations set out in UNSCR 1373, which are to freeze the assets of those involved in terrorism and to prevent funds, economic resources and financial services being made available to such persons. The Government therefore remains of the view that it is necessary to maintain a terrorist asset freezing regime to meet our UN Security Council obligations and to protect national security.

2.17 Under section 4 of the ATCSA the Treasury may make a freezing order either to deny funds and assets to foreign terrorists where they may pose a threat to the life and property of UK nationals or residents, or to prohibit financial transactions by foreign governments or persons who are deemed to be threatening the national economy. The second limb of these provisions makes clear that they go beyond terrorism into other emergencies. The provisions replaced general emergency powers set out in section 2 of the Emergency Laws (Re-enactments and Repeals) Act 1964. Section 10 of the ATCSA provides that the power to make a freezing order is to be exercised by statutory instrument, which must be laid before Parliament after being made and requires to be approved by both Houses within 28 days of being laid, failing which it will lapse.

2.18 During the Supreme Court case and during debate in Parliament on the Asset Freezing (Temporary Provisions) Bill, reference was made to these powers and a number of comments were made, including the suggestion that this power could be used or adapted to meet the UK's obligations under UNSCR 1373 (2001).

2.19 Freezes under the ATCSA as drafted can only be made where there is reasonable belief that action threatening the UK economy (or part of it) or the lives or property of UK nationals or residents has been or is likely to be taken by governments or residents of countries outside the UK. The provision would not cover UK based persons unless the Government could demonstrate a link to external persons who pose a direct threat to the UK or UK nationals. In the case of a domestic plot this link would be absent.

2.20 While these provisions could be amended, there are more fundamental issues with this power. In current asset freezes, the Treasury relies upon evidence that is the subject of a criminal prosecution and, in a smaller number of cases, on intelligence material. In a small number of cases, 'restricted' designations have been made, where a designation is not publicised generally. This may be, for example, because general publication would prejudice a police or intelligence investigation.[3] In each instance it would not be possible to debate the information relied upon for designations before Parliament. Because of this, and the limitations outlined in paragraph 2.19, no one designated under the Terrorism Orders in the last two years could have been frozen under ATCSA freezing powers.

2.21 For these reasons, the Government is of the view that new terrorist asset freezing legislation is needed to enable the UK to meet its obligations under UNSCR 1373 (2001) and to protect national security needs.

[3] For more detail on restricted designations, see paragraph 4.33 below.

# 3 International framework

3.1 Given the global nature of terrorism and of the financial system, actions to combat terrorist finance are coordinated and agreed at an international level and international co-operation is vital.

3.2 Targeted financial sanctions, including asset freezes, have been increasingly used against particular individuals, groups and entities in order to restore or maintain international peace and security.

3.3 Paragraph 1.2 of Chapter 1 set out the two sets of terrorism-related financial sanctions adopted by the UN Security Council in respect of Al-Qaida and the Taliban and individuals involved in terrorism.

3.4 These resolutions have also been implemented by the European Union and individual member states. In addition, the Financial Action Task Force (FATF) has developed international standards on combating terrorist financing.

## United Nations action against terrorism

3.5 On 28 September 2001 the UN Security Council adopted resolution 1373 (2001) relating to terrorism. This resolution followed the terrorist attacks of 11 September 2001. It is concerned with terrorist financing and targets persons who commit, attempt to commit, participate in or facilitate the commission of terrorist acts.

3.6 Operational Paragraph 1 of UNSCR 1373 (2001) highlights the UN Security Council's decision that all UN member states shall:

> "…(c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;
>
> (d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons"

3.7 UN Member States are required to identify the persons against whom action is to be taken. A decision taken by an individual state will only apply within the jurisdiction of that state, although states are encouraged to share information for the purpose of taking action against terrorism.

3.8 There is no explicit provision in UNSCR 1373 (2001) for the granting of licences as an exception to the prohibitions against making funds, financial assets or economic resources available to designated persons. UNSCR 1452 (2002), which sets out the procedure by which

member states may authorise exemptions for granting basic expenses and extraordinary expenses for those designated under UNSCR 1267 (1999), also urges member states to take full account of these considerations in their implementation of UNSCR 1373 (2001). The UK gives effect to UNSCR 1452 (2002) by operating a licensing regime. Chapter 5 of this document discusses licensing in more detail.

## European Union action against terrorism

3.9 Under the EU Common Position 2001/931/CFSP, which forms part of the EU's Common Foreign and Security Policy, EU member states agreed to adopt measures to implement UNSCR 1373 in the European Union.

3.10 Council Regulation (EC) 2580/2001 implements the Common Position in the EU, laying down directly applicable rules on terrorist asset freezes and requiring member states to provide for their enforcement in member states' territories. The Regulation lists persons in respect of whom EU members states are required to implement asset freezes and has a mechanism for amending this list.

3.11 The EU asset freezing regime is a valuable complement to, but not a substitute for, the UK's own national asset freezing regime. The EU regime requires there to be a prior competent authority decision in respect of the individual/group to be subjected to the freeze. So a decision by the Treasury to make a terrorist asset freeze, or by the Home Office to proscribe an organisation under the Terrorism Act 2000, or a criminal conviction for a terrorism-related offence would all constitute competent authority decisions, following which it would be possible to put the person concerned forward for inclusion on the EU list.

3.12 The need for a prior competent authority decision means that the EU regime does not therefore allow the same immediate level of preventative action to freeze suspected terrorists' assets as the UK's national terrorist asset freezing regime. A national framework is also required to prevent assets being used for terrorist purposes whilst EU-level agreement is being secured, e.g. when an imminent plot is uncovered or there are other operational needs to implement the freeze urgently. The Operation Overt asset freezes referred to in paragraph 4.7 would not, for example, have been possible under the EU asset freezing regime. EU asset freezing is valuable, however, in ensuring that action is taken across the EU to implement asset freezes and prevent listed persons from accessing the financial system in EU Member States.

3.13 UNSCR 1373 was given effect in the UK by the Terrorism (United Nations Measures) Orders 2001, 2006 and 2009 (the 2001 and 2006 Orders were repealed save to continue asset freezing decisions made under those Orders). The current Order, the 2009 Order, implements a national framework for implementing terrorist asset freezes in the UK, including the requirements of the Council Regulation. By virtue of the Terrorist Asset-Freezing (Temporary Provisions) Act 2010, the Terrorism Orders are valid until 31 December 2010. Both the 2009 Order and the Terrorist Asset-Freezing (Temporary Provisions) Act 2010 can be found on the Treasury's website.[4]

## International standards

3.14 Following the attacks on 11 September 2001, FATF, the international anti-money laundering standard-setting body, expanded its remit to include counter terrorist finance.

3.15 On 30 October 2001 the FATF adopted eight (subsequently nine) Special Recommendations on terrorist financing. The Special Recommendations set out the key

[4] The Terrorism (United Nations Measures) Order 2009 is available at: http://www.hm-treasury.gov.uk/d/si_1747_terrorism_order_2009; the Terrorist Asset-Freezing (Temporary Provisions) Act 2010 is available at: www.hm-treasury.gov.uk/d/finsanc_terrorist_assetfreezingact_tempprov_120210.pdf

legislative and regulatory steps that countries need to have in place to effectively combat the financing of terrorism.

3.16 Special Recommendation III is concerned with asset freezing, and is underpinned by best practice guidance. This guidance covers freezing the funds or other assets of designated persons quickly and effectively, in accordance with relevant UNSCRs, while ensuring respect for human rights, the rule of law and the rights of innocent third parties. FATF guidance and best practice on Special Recommendation III on terrorist asset freezing is available on the FATF website.[5]

3.17 In July 2007 the FATF's evaluation of the UK asset freezing regime assessed it to be fully compliant with international standards, the first country to be awarded this top mark.

[5] http://www.fatf-gafi.org/document/44/0,3343,en_32250379_32236920_43751788_1_1_1_1,00.html

# 4 UK approach to terrorist asset freezing

4.1 This chapter provides an overview of how the UK approaches terrorist asset freezing and the principles that underlie the approach adopted in the draft legislation. The key objective of terrorist asset freezing is to help stop terrorism by preventing funds, economic resources or financial services from being used or diverted for terrorist purposes.

## Preventative approach

4.2 As set out above, asset freezes are a preventative tool and do not require that criminal proceedings have been commenced in relation to the targeted individual. In order to impose an asset freeze under the Terrorism Order 2009, the Treasury must have reasonable grounds to suspect that a person is someone who commits, attempts to commit, participates in or facilitates the commission of acts of terrorism, or is a person owned or controlled by, or acting on behalf of or at the direction of such a person. If that requirement is met, the Treasury must also conclude that an asset freeze is necessary for public protection.

4.3 The Supreme Court quashed the Terrorism Order 2006 on the grounds that the inclusion of a 'reasonable suspicion' threshold was not 'necessary or expedient' for the implementation of UNSCR 1373 (2001). The Supreme Court noted that 'reasonable suspicion' was not specifically referred to in UNSCR 1373 (2001) and concluded that the general words of section 1 of the United Nations Act 1946 did not give authority to make an order which interfered with fundamental rights on the basis of a 'reasonable suspicion' threshold. However, the Supreme Court did not condemn the Terrorism Order on wider grounds of incompatibility with human rights. Those members of the Court who commented on the arguments put forward that the Terrorism Order 2006 was disproportionate dismissed such arguments. [6]

4.4 In addition, the use of reasonable suspicion is consistent with police powers of arrest. This allows joint action to be taken, freezing the assets of suspected terrorists at the time of their arrest or pending the resolution of criminal proceedings, and enhances the operational effectiveness of the regime (see paragraph 4.7 below).

4.5 In line with FATF guidelines, the Government continues to believe that 'reasonable suspicion' is the appropriate legal test if States are to have a fully effective preventative asset-freezing regime in accordance with the requirements of UNSCR 1373 (2001).

## Operational benefits

4.6 The UNSCR 1373 (2001) terrorist asset freezing regime is a valuable tool for disrupting terrorist activity within the UK. This reflects the fact that the regime enables the Treasury to freeze the assets of those suspected of involvement in terrorism and that decisions are made at a national level on the basis of operational advice from law enforcement and security and intelligence agencies. Operational benefits of asset freezing can include:

[6] *Ahmed & Others v HM Treasury [2010] UKSC 2, see Lord Brown at para 201, Lord Mance at paragraph 235 and Lord Phillips at paragraph 144.*

- denying terrorists and their facilitators the ability to raise funds and move them through the international system;
- creating a cordon around any funds which are already in the financial system;
- harvesting the financial system for financial intelligence on any funds held by the designated individual or group – which can help to provide valuable information on connections between individuals and groups and their activities; and
- helping to disrupt the activities of individuals suspected of being involved with terrorism.

4.7 The Terrorism Order freezing powers have been used effectively on a number of occasions to support important counter-terrorism operations. For example, in August 2006 the Treasury froze the assets of a number of individuals who had been arrested as part of Operation Overt, on suspicion of plotting to blow up transatlantic airliners. The freezes were imposed within 24 hours of the arrests, helping to ensure that funds were not dispersed to associates of the individuals at a time when there was still uncertainty about the scale of the plot.

4.8 Around £160,000 is frozen in the UK under the Terrorism Orders, with around an additional £210,000 frozen under the UN Al-Qaida and Taliban regime. Whilst these are not large sums in absolute terms, as set out earlier, the cost of mounting terrorist attacks is low and freezing even small amounts of money can be operationally effective.

4.9 Moreover, the operational impact of an asset freeze is not limited to the amount of funds frozen, as it also prevents designated persons from raising and moving other funds through the financial system. This is an important factor as terrorist financiers do not generally rely on using just their own funds to support terrorism, but instead act as fund-raisers or intermediaries between donors on the one hand and those planning terrorist acts on the other. Therefore the prohibition on designated persons accessing funds from others is just as important in operational terms as the requirement that their own funds be frozen.

## Effective safeguards

4.10 The Government believes in the importance of striking the right balance between protecting national security whilst also ensuring sufficient safeguards in respect of human rights. The Government accepts that asset freezing, as envisaged in UNSCR 1373 (2001), interferes with the human rights of individuals and third parties – for example the right to the enjoyment of property. But the belief and intention is that it does so in a way that is proportionate – i.e. only to the extent necessary to meet the objectives of the regime to disrupt terrorist finance.

4.11 The draft legislation includes a number of provisions to ensure that the measures take account of the human rights of the individuals whilst meeting their objective of preventing funds being used for terrorist purposes. Similar provisions already exist under the Terrorism Order 2009 and the Counter-Terrorism Act 2008:

- asset freezes are time-limited to twelve months, but can be renewed on the basis of a fresh decision;
- designations can only be made where the 'reasonable suspicion' requirement is met and a designation is necessary for public protection;
- any person may apply to the Treasury for a licence to provide for an exemption to the asset freeze (see Chapter 5);
- any person affected by a Treasury decision (including designation or licensing) can apply to the court for that decision to be set aside;

- where closed source (intelligence) information is used, provision is made for the use of special advocates, security cleared counsel who acts in the individual's interests in relation to the closed material and in closed hearings – though the special advocate does not act for the individual and nor is the individual his client; and
- the Treasury reports to Parliament on a quarterly basis on the use of the powers.

4.12 In addition, the draft legislation introduces a new safeguard, stating that the Treasury must appoint someone to carry out an independent review of the operation of the Act.

4.13 Each of these safeguards is discussed in more detail below.

## Judicial Review

4.14 Any person affected by an asset freezing decision of the Treasury has the right to apply to the High Court to have that decision set aside. For example, as set out above, the decision to designate is based on a two-stage requirement that needs to be met if a person is to be designated, and which would be examined by the Court as part of any judicial review.

4.15 The first stage would involve an objective consideration by the Court of whether the grounds for the decision were reasonable. The Government anticipates this would include a proper scrutiny of the material upon which the Treasury decision was made. The Court would in addition have the power to consider such further information as it believed necessary. The purpose of the examination would be to decide whether the grounds of the decision were reasonable.

4.16 The second stage would involve a review of the Minister's decision that the designation was necessary for public safety. The Government anticipates that the Court will accept that the Minister is entitled to take a cautious approach, but that again the factors relied upon will be subject to a proper scrutiny.

4.17 The judicial review test is the norm in a number of other national security contexts and the courts have demonstrated that it can be adapted to ensure an appropriately robust level of scrutiny of ministerial decisions. It is clear that the courts have been fully prepared to quash decisions that cannot survive proper judicial scrutiny.

## Special advocates

4.18 The Government believes that it is important to be able to use intelligence material, including intercept material where necessary, when making decisions on asset freezing. The decision to use closed source information was announced in October 2006 by the Economic Secretary to the Treasury in a statement to Parliament, in which he said:

> "The Treasury has agreed, on the advice of law enforcement agencies, to use closed source evidence in asset freezing cases where there are strong operational reasons to impose a freeze, but insufficient open source evidence available. The use of closed source material will be subject to proper judicial safeguards. The Government intends to put in place a special advocate procedure to ensure that appeals and reviews in these cases can be heard on a fair and consistent basis."

4.19 Amendments to the Regulation of Investigatory Powers Act 2000 by the Counter-Terrorism Act 2008 provide that intercept material may be relied upon in proceedings to challenge a Treasury decision. Further provisions of the Counter-Terrorism Act put in place the appropriate safeguards in court proceedings to protect sensitive material for the purposes of national security, including providing for the appointment of special advocates.

4.20 Special advocates are lawyers who have undergone full developed vetting security clearance. They are barristers in independent practice of the highest integrity, experience and ability, from civil and criminal practices. They are bound by the ethical standards of the Bar Council.

4.21 The role of the special advocate is to act in the interests of the claimant in relation to closed source material – to receive and make submissions on intelligence evidence that the appellant and the appellant's representatives cannot be privy to. However, the special advocate does not represent the appellant, and the appellant is not the special advocate's client.

### Quarterly Report

4.22 To ensure appropriate accountability and transparency, the Treasury reports to Parliament on a quarterly basis on the operation of the UK's asset freezing regime in a written Ministerial statement. The draft Bill enshrines this in legislation.

4.23 The report provides information on the number of designations, reviews, delistings and licences issued during that quarter and the total amount of funds frozen.

4.24 The most recent Quarterly Report was laid before Parliament on Monday 8 March 2010 and is available online.[7]

### Independent Review

4.25 The draft Bill sets out that the operation of the asset freezing regime will be independently reviewed within nine months of the draft Bill receiving Royal Assent, and on a yearly basis thereafter. The independent reviewer will be free to examine any aspect of the regime and the reviewer's report will be laid before Parliament.

4.26 This additional safeguard has been written into the draft Bill to ensure that Parliament has impartial, independent advice on the operation of the asset freezing regime, in addition to the information which is provided in the Treasury's quarterly reports.

## Designation, review and delisting

4.27 When a person is designated by the Treasury they are made subject to financial restrictions. The decision to designate is taken by a Treasury minister, who considers both policy and legal advice.

4.28 The Treasury is in turn advised by law enforcement and security and intelligence agencies, who submit statements of case setting out the basis on which they propose that a person should be subjected to a freeze.

4.29 The draft Terrorist Asset-Freezing Bill has a two limb test broadly similar to the provisions in the Terrorism Order 2009 referred to at paragraph 4.2 above. The first limb of the test under the draft Terrorist Asset-Freezing Bill is that the Treasury must have reasonable grounds for suspecting that the person:

- is or has been involved in terrorist activity;
- is owned or controlled directly or indirectly by a person who is or has been involved in terrorist activity; or
- is acting on behalf of or at the direction of someone who is or has been involved in terrorist activity.

[7] http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100308/wmstext/100308m0001.htm.

4.30 The second limb is that the Treasury must consider that the asset freeze is necessary for purposes connected with protecting members of the public from terrorism.

4.31 The first limb in the draft Bill does not follow exactly the approach in the current Terrorism Order 2009. The Terrorism Order allows freezes to be applied where the Treasury has reasonable grounds to suspect that someone is a person who is involved in terrorism. This follows closely the language of UNSCR 1373. The draft Bill replaces this with the test that the Treasury has reasonable grounds to suspect that someone is or has been involved in terrorism. In practice, this will not change the scope of the current legal test, but will clarify it. Under the current test, the Treasury considers past terrorist activity to be relevant in determining whether someone is a person who commits, attempts to commit, participates in or facilitates the commission of terrorist acts. The Government considers that it is preferable and more transparent for the legal test to spell this out more clearly.

4.32 Upon being designated, the individual concerned is sent a letter by the Treasury, informing the individual of the fact of the designation and as far as possible the grounds for the designation. The letter also informs the person of the Treasury's powers to grant licences, provides contact details for the part of the Treasury which deals with licence applications and sets out the right to make representations and to apply for the direction designating the person to be set aside.

4.33 Designations may be public (published on the Consolidated List – see paragraphs 4.40-4.43) or restricted. Restricted cases can involve minors, or where the Treasury consider that disclosure should be restricted in the interests of national security, reasons connected with the prevention and detection of serious crime, or in the interests of justice. In these cases, the Treasury only informs such persons as they consider appropriate and the designation is not publicised generally. There are currently no restricted designations in force.

4.34 The effect of designation is that the designated person's assets are frozen and people cannot make funds, financial services or economic resources available to or for the benefit of that person without a licence. The prohibitions make allowance for activities that do not present a terrorist finance threat.

4.35 Breaches of the asset freeze are criminal offences. To monitor and enforce compliance, the financial sector is required to report to the Treasury if it knows or suspects that any of its customers are designated persons or have breached the asset freeze. The Treasury also has powers to request and share information.

4.36 Designations must be reviewed every twelve months, or sooner if there is a significant change in a designated person's circumstances, e.g. if charges are dropped or modified, an individual is acquitted at trial, or new information about the individual comes to light. A designated person may request the Treasury to review a designation at any time and can provide information to support such a request.

4.37 If designations are not reviewed within twelve months and a new designation made, the original designation will lapse.

4.38 The aim of the review is to determine whether the legal test is still met and if so whether the licensing framework needs to be modified. The Treasury contacts the designated individual (or their representative) where possible to inform them of the pending review and give them the opportunity to write in with representations. This helps ensure that the review considers all relevant information.

4.39 As set out in Box 4.A below, asset freezing does not necessarily or even mainly involve close source material and individuals who are never prosecuted before a Court. On the contrary, the vast majority of cases involve individuals who are charged and prosecuted with terrorist

offences. Nor would it be accurate to assert that people subject to an asset freeze remain on the list indefinitely and are unable to be delisted. On the contrary, a significant minority of individuals who have been designated in recent years have had their designations subsequently revoked as a result of a Treasury decision following a case review. Delistings may reflect a number of factors, such as a change in behaviour or new evidence coming to light, indicating that one or both of the limbs of the legal test is no longer met.

**Box 4.A: Designation, review and delisting: facts and figures**

- There are currently a total of 30 UK individuals who are solely designated under the Terrorism Orders.
- 21 individuals who have been subject to the Terrorism Orders and who are UK citizens or resident in the UK have had their designations revoked in the last three and a half years.
- These 21 individuals' delistings represent around 40 per cent of the total of 51 UK residents and citizens ever designated solely under the Terrorism Orders.
- Of the 51 UK cases, only seven were not the subject of parallel law enforcement action. One of these seven has now been delisted.

## Consolidated List

4.40 The Treasury maintains a Consolidated List of financial sanctions targets subject to financial sanctions in effect in the UK. The names of persons designated under the Terrorism Orders are also included in the Consolidated List, unless they are designated on a restricted basis (see paragraph 4.33).

4.41 The Consolidated List is published on the Treasury's website. It is a tool to facilitate compliance and is available in various formats that can be freely downloaded and run against firms' client databases and payment systems.

4.42 For asset freezing measures to be effective it is vital that sufficient good quality identifying information on designated persons e.g. full name (surname, forenames), date of birth, place of birth, nationality, aliases etc) is available at the point of designation, and thereafter.

4.43 This enables financial institutions and others to identify the assets of the designated person quickly and helps to ensure the correct assets are frozen. The Treasury works to ensure that such identifiers are available for persons designated under the Terrorism Orders.

# 5 Implementation

## Role of the financial sector

5.1 The financial sector plays a key role in the effective implementation of asset freezing.

5.2 Financial institutions are responsible for correctly identifying customers who are designated persons and ensuring that their accounts and other financial products are properly frozen. The financial sector is also key in ensuring that designated persons are unable to use payment systems, which they achieve by monitoring systems for transactions involving designated persons.

5.3 There are specific reporting obligations on institutions operating in the financial sector. They are required to notify the Treasury if they know or suspect that a customer or a person who has been a customer in the previous five years is a designated person, or has committed an offence under the legislation. The reports that financial institutions submit to the Treasury on the accounts and financial products of designated persons, together with reports on credits received on frozen accounts, provide valuable information on the financial activity of designated persons. Financial sector reporting also assists the Treasury in confirming or identifying gaps in information provided by designated persons, identifying potential breaches of the asset freeze and providing information that may be relevant to ongoing investigations.

5.4 Financial institutions also play a pivotal role in implementing the Treasury's licensing regime. Their cooperation is necessary to ensure that designated persons are able to access their frozen accounts or undertake certain financial transactions where licensed by the Treasury.

5.5 The Government recognises that financial sanctions inevitably impose some costs on the financial sector and other businesses. These comprise compliance costs to implement financial sanctions and some disruption to business. However, the Government seeks to ensure that these costs are proportionate – i.e. no more than is necessary to meet the objectives of the measures. It works closely with the financial sector to seek to raise standards of compliance and avoid unnecessary costs by:

- seeking to continually improve the design and operation of the terrorist asset freezing regime, for example by raising the quality of identifying information and the consistency of financial sanctions legislation;
- seeking to use the regime in a proportionate and targeted way;
- raising awareness of the financial sanctions regime and providing high-quality information about financial sanctions legislation and sanctions targets; and
- using the licensing regime to permit transactions, where appropriate, that would otherwise be blocked by the asset freeze.

5.6 The Government is of the view that the benefits of the terrorist asset freezing regime, in terms of disrupting terrorist finance, outweigh the costs that the regime incurs for businesses and others.

## The licensing regime

### The UK's licensing obligations

5.7 The Treasury recognises the importance of having an effective licensing system to ensure the overall proportionality and fairness of the asset freezing regime. The licensing regime has been developed and improved in recent years, in light of the experience of operating it, to ensure that it remains as effective as possible in achieving its objective of balancing proportionality and fairness against the need to protect national security.

5.8 UN Security Council Resolution 1452 (2002) specifically applies to Al-Qaida and Taliban sanctions under UNSCR 1267 (1999) and the UN urges members to take it into account in implementing terrorism sanctions under UNSCR 1373 (2001). It allows member states to authorise exemptions to the asset freeze, where appropriate, including access to frozen funds or other financial assets or economic resources to meet "basic expenses" (that is, basic humanitarian needs which include payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, public utility charges and legal fees and expenses) and "extraordinary" expenses.

5.9 While the UN Sanctions Committee makes a distinction between basic and extraordinary expenses requests, the Treasury does not seek to limit designated persons or their families to basic expenses only. The Treasury's policy – consistent with taking a proportionate approach – is that designated persons should have access to their income and other property insofar as this can be arranged without giving rise to risk of terrorist financing.

### The UK's licensing regime

5.10 The key objective of the licensing regime is to strike an appropriate balance between minimising the risk of diversion of funds to terrorism and meeting the human rights and humanitarian needs of affected individuals and their families.

5.11 The Treasury seeks to meet this objective by ensuring the licensing regime is:

- robust, with appropriate safeguards to protect against the risk of funds being diverted to finance terrorism, clear processes and procedures in place to deal with breaches of licences by designated persons, and minimising as far as possible breaches by other affected parties;
- proportionate, with licence conditions that take into account human rights and ensure that only conditions that are necessary to meet the licensing regime objectives are imposed; and
- efficient, with licence requests dealt with effectively and promptly, licences that are workable and clear for all affected parties.

5.12 Key features of the licensing regime that help ensure proportionality and fairness are:

- the Treasury issues certain licences at the point of designation. These are a legal expenses licence, and where appropriate a licence to the relevant departments (e.g. Department for Work and Pensions, HM Revenue & Customs and the housing benefit sections of Local Authorities) to pay any state benefits due to a designated person and a licence allowing the designated person to access their funds to meet living expenses (although some restrictions may be included to limit the amount of this money that can be withdrawn in cash). By granting these licences at the point of designation, the intention is to ensure that the designation results in the minimum of interruption to the everyday lives of designated persons and their families and to allow them to obtain immediate legal representation.

- the Treasury's policy to ensure that state benefits due to the designated person and their household are paid in full unless there are strong national security reasons why this would not be appropriate. Currently, all designated persons and their households are receiving their full entitlement of benefits.
- the Treasury's announcement in a written ministerial statement on 5 February 2010 that where benefits are paid into a household to a person other than to the designated person, there will no longer be a general requirement on spouses or partners of designated persons to report to the Treasury on the expenditure of their household benefits. The Government believes that this will significantly reduce any adverse humanitarian impact the licensing regime has on them.

## Licence conditions

5.13 The exact conditions in a licence are set on a case-by-case basis depending on the circumstances of the designated person and the terrorist finance risks involved. In order that controls are set in a way that are proportionate and risk-based, the Treasury takes advice from law enforcement and security and intelligence agencies about the terrorist finance risks involved in each case and the appropriate licence conditions to address them. Consistent with the objective of proportionality, the Treasury's intention is to impose only those controls that are necessary to protect against terrorist finance risks. In this way, appropriate conditions facilitate the granting of licences that might otherwise not be possible to grant.

5.14 For example, the Treasury has allowed licences for such things as the purchase of cars and other expensive items, and the transfer of property. The Treasury has also licensed expenditure related to overseas family holidays for the families of designated persons.

5.15 The conditions applied to licences reflect two broad objectives:

- to ensure that designated persons do not have access to large amounts of cash, which can be more easily diverted to terrorist activity; and
- to ensure that there is a reasonable audit trail to address terrorist finance risks and so that the Treasury can monitor compliance with the terms of the licence and identify if any breaches have occurred that could give rise to national security concerns.

5.16 Licence conditions are assessed on a case-by-case basis, and can include:

- a limit on the amount that can be withdrawn in cash per week, with other transactions to be made electronically, e.g. by debit card, standing order and direct debit;
- a prohibition on transferring funds to other accounts or abroad; and
- a requirement to report on expenditure in accordance with the licence terms.

5.17 Where an individual wishes to change the terms of their licence or the conditions imposed on them (such as a requirement to report on their expenditure) they can write to the Treasury with any supporting evidence as to why they require a change to the terms or conditions of the licence. The Treasury will consider any representations made in the light of the terrorist finance risks involved in individual cases and the effect these terms have on the individual's human rights.

5.18 Where the Treasury is unable to agree to the changes (because it is considered that any changes to a licence would give rise to a terrorist financing risk) an individual can apply to the Courts for their licence conditions to be reviewed (see paragraph 4.14 above).

## Applying for a licence

5.19 A designated person or an affected third party can apply for a licence at any time. Each licence request is considered on its own merits, taking account of the risk in each case of diversion of funds to terrorism. As set out at paragraph 5.12 certain licences are issued at the point of designation.

5.20 Typically, licences will allow for the designated person to use funds in a specified bank account to pay for accommodation; utility bills, household expenses etc. Licences may also impose a limit on the amount of cash that can be withdrawn from the account in any given period (usually over a seven day period) and require some form of reporting on expenditure made under the terms of the licence (usually monthly).

5.21 After a person is designated, the Treasury may also seek further information on that person's family circumstances, financial obligations and details of income in order to ensure that the licences issued to that person upon designation are appropriate. Where necessary, the Treasury will make changes to licences issued or issue new licences to ensure that designated persons have appropriate licences in place to minimise the humanitarian impact of the asset freeze on them and their families.

5.22 Affected third parties may also apply for a licence at any time. Examples of this include where a government department needs a licence to continue to pay a designated person their benefits or where an insurance provider needs a licence to provide insurance to a designated person.

## Household benefits policy

5.23 Council Regulation (EC) 881/2002 states that it is an offence to "make funds available directly or indirectly for the benefit of the designated person" without a licence from a competent authority. A broadly similar provision is set out in Council Regulation (EC) 2580/2001 on terrorism.

5.24 The Treasury's interpretation of this provision, as set out in a written statement to Parliament by the then Economic Secretary in July 2006, is that it includes the provision of state benefits to the spouses or partners of designated persons where they are living together in the same household as the designated person. It is on this basis that the Treasury licenses the payment of state benefits to the households of designated persons. It has usually been a condition of these licences that all the household benefits are paid to the (unfrozen) account of a designated person's spouse or partner. While a spouse or partner may spend these benefits on the household's needs, they have been required to report to the Treasury on the expenditure of those funds.

5.25 This interpretation is currently the subject of litigation before the European Court of Justice (ECJ) in case C-340/08 M. Advocate General Mengozzi's Opinion was delivered on 14 January 2010 and indicated that the provision should be interpreted narrowly and should not include the payment of state benefits to the households of designated persons. The Advocate General's Opinion is not binding on the ECJ. A final ECJ decision is expected within months, after which the UK's Supreme Court will make its judgment on the case.

5.26 Pending a final judgment, the Treasury continues to license the payment of state benefits to the spouses or partners of designated persons. However, bearing in mind the need for licence conditions to be proportionate, the Treasury announced in a written ministerial statement on 5 February 2010 that, where benefits are paid into a household to a person other than to the designated person there will no longer be a general requirement on spouses or partners of designated persons to report to the Treasury on how benefits are spent. The

Treasury considers that this will significantly reduce any adverse humanitarian impact the licensing regime has on the spouses or partners of designated persons.

# 6 Draft legislation

6.1 The Government published a draft Terrorist Asset-Freezing Bill on 5 February 2010. The draft Bill, explanatory notes and Regulatory Impact Assessment are annexed to this consultation document.

6.2 The structure of the draft Bill closely follows that of the Terrorism Order 2009. This chapter outlines the main provisions in the draft Terrorist Asset-Freezing Bill.

## Power to impose financial sanctions, duration and notification of designations

6.3 The draft Bill provides for asset freezes to apply automatically to persons who have been designated at the EU level under Council Regulation (EC) 2580/2001. This meets our obligation to provide for full enforcement of EU asset freezes. The EU asset freezing regime was discussed in Chapter 3.

6.4 The draft Bill also gives the Treasury a domestic power to designate (i.e. freeze the assets of) persons on the basis that:

- the Treasury has reasonable grounds to suspect that the person is or has been involved in terrorist activities or is controlled directly or is acting on behalf of or at the direction of such a person; and
- the designation is necessary for public protection.

6.5 This power to designate has been discussed in Chapter 4.

6.6 The Treasury will take steps to notify a person designated of the designation, and unless one of a number of exceptions apply, will publicise the designation generally, as the wide publication of an asset freeze is important to ensuring its effectiveness. The Treasury has a website which publicises designations and a notification service which informs subscribers of changes to the Consolidated List (see paragraphs 4.40-4.43 above). This free service is an important tool in ensuring that financial institutions in particular are made aware immediately of any changes to the Consolidated List, such as a new designation. The Treasury's financial sanctions website is available at http://www.hm-treasury.gov.uk/fin_sanctions_index.htm.

6.7 The Treasury will not publicise a designation if one of the conditions in clause 3(3) of the draft Bill are met, namely that the designated person is under 18 years old or the Treasury believes that publication should be restricted for reasons of national security or for reasons connected with the prevention or detection of serious crime (e.g. wide publication may adversely affect an ongoing intelligence or police investigation) or in the interests of justice (e.g. it may prejudice a criminal investigation or trial).

6.8 Designations will last one year (unless revoked sooner), and will lapse at the end of the year unless a further designation is made. A further designation must meet the requirements for a designation set out above. As explained in Chapter 4, the Treasury will review a designation at any time where it has information to suggest that a review would be appropriate. This could include for example representations from the designated person or significant developments in a criminal case in which the designated person is a defendant.

## The effect of a designation

6.9 The effect of a designation is threefold:

- to prevent anyone dealing with the designated person's funds and economic resources (this is the freezing provision);
- a prohibition on providing funds, financial services or economic resources to a designated person (in the case of economic resources, only where the giver believes the designated person may use or exchange them for funds, goods or services); and
- a prohibition on providing funds, financial services or economic resources for the benefit of a designated person where the designated person would receive a significant financial benefit.

6.10 Of these, the prohibitions on dealing with the designated person's funds and other assets and on providing the designated person with funds are relatively straightforward and the draft Bill provides a clear definition of the relevant terms.

6.11 Clause 9 sets out the prohibition on making funds or financial services available for the benefit of a designated person. This means that money does not actually go to the designated person, but is used to the designated person's advantage. So, if someone paid a designated person's rent to the designated person's landlord, the designated person would not get the money but would get the benefit of the payment. The Treasury would not ordinarily want to stop such a payment, but would want to be aware of it so that it can be taken into account when deciding how much money the Treasury should allow a designated person to have access to, and the purposes for which money can be spent.

6.12 Put simply, if the Treasury is aware that other people are paying certain bills for a designated person the Treasury can make sure that licences allowing the designated person access to their funds reflect this. Otherwise there is a danger that the designated person may claim that they are responsible for a payment such as rent, be allowed access to funds to pay that rent and therefore, as a result of others meeting the expense, be able to build up a surplus of funds that could be diverted to terrorism. The Treasury can and does licence payments for the benefit of designated persons, but the existence of this prohibition ensures that this happens in a regulated way with minimal risk of funds being diverted to terrorism. For example, when granting a licence for someone else to pay a designated person's rent, the Treasury would check that there were no national security concerns about the persons making or receiving the payment and that the designated person was not at the same time also claiming Housing Benefit or had access to their own funds for rent.

6.13 Clause 9(2)(a) sets out that the prohibition on making funds available for the benefit of a designated person only applies where the designated person is able to obtain a "significant financial benefit". This makes it clear that the prohibition is not intended to catch payments where the designated person only derives an incidental benefit.

6.14 Clause 10 sets out the prohibition on making economic resources available to a designated person. Economic resources can be anything – except funds – which can be used to obtain funds, goods or services. In other words anything with a resale or barter value could be an economic resource. The intention is not to stop the ordinary giving and receiving of presents or hospitality or to cut the designated person off from the interactions of daily life with other people. That is why the ban on providing economic resources only applies where the person giving the resource knows or has a reasonable suspicion that the designated person is likely to turn the resource into funds, goods or services. The aim is to allow ordinary activity but to stop economic resources being given where they are not for the designated person's enjoyment but where the giver knows or suspects that the designated person could exploit the resource to

obtain money or other goods: the danger is that such money or other goods could be used for a terrorist purpose.

6.15 Clause 11 stops economic resources being made available for the benefit of the designated person. As with the provision in clause 9 on funds, this is where the designated person does not actually receive the economic resources, but someone else does and the designated person derives a benefit from it. Again, this only applies where the giving of the economic resource results in a benefit of value, which is why it only applies where a 'significant financial benefit' is provided.

6.16 Clause 14 sets out the framework for licensing. This is covered in more detail in the previous Chapter.

6.17 Part 3 of the draft Bill sets out a range of information gathering powers. These are important to enable the Treasury to enforce the asset freezing regime. They include obligations on financial institutions to report to the Treasury about any dealings they have, or have had in the last five years, with designated persons. This can be a valuable tool in ensuring that all financial assets of a designated person are identified promptly. Clause 16 also gives the Treasury the power to request information from designated persons, from those holding licences granted by the Treasury and from any person or resident in the United Kingdom, where a request is reasonable to enable the Treasury to enforce the asset freeze. The Treasury is mindful of the need to ensure that any request for information must be proportionate and necessary. Clause 20 sets out the conditions governing disclosure of information by the Treasury.

6.18 Clause 22 sets out the provision for the review of Treasury decisions by a court. It makes it clear that all Treasury decisions taken under the legislation can be challenged; that anyone affected by a decision (i.e. not just the designated person) can apply to the High Court for the decision to be set aside; and that the court shall apply judicial review principles. Clause 23 applies the provisions of the Counter-Terrorism Act 2008 referred to in paragraph 4.19 to challenges to Treasury decisions under this legislation.

6.19 Clause 24 provides that the Treasury must report quarterly to Parliament on the operation of the Act. Clause 25 requires the Treasury to appoint an independent person to review the operation of the Act within 9 months of the Act coming in to force and then subsequently on annual basis. These independent reports must be laid in Parliament and are intended to provide additional transparency to Parliament and the public about the operation of the terrorist asset freezing regime.

6.20 Clause 26 sets out the criminal penalties for the offences set out in the draft Bill. They are set at the level that currently applies under the Terrorism Order 2009.

## Differences between the draft Bill and the Terrorism Order 2009

6.21 The main differences between the Terrorism Order 2009 and the draft Bill are:

- the legal test for designation changes from reasonable suspicion that a person is 'a person who commits' to a person who 'is or has been' involved in terrorist activities. This is not intended to change the scope of the current designation power, but rather to provide greater clarity that past terrorist activity is relevant in determining whether someone should be designated (see paragraph 4.31 above);
- the prohibitions against dealing with designated person's funds and making funds available to a designated person have been framed so that they only apply if the person knew, or had reason to suspect, that the funds belonged to or would go to the designated person. The Terrorism Order 2009 has absolute prohibitions and it is for third party to show they did not know that funds would go to the designated

person. The Government believes this approach is clearer and emphasises that the prohibitions are not intended to capture innocent third parties;

- similarly, the prohibition on making economic resources available to a designated person only applies where the person giving the resource knows or has reason to suspect that the designated person will use or exchange the resource for funds, goods or services. The Terrorism Order 2009 has an absolute prohibition on making economic resources available, but has a defence where a person did not know or had no reason to suspect that the designated person would use it to generate funds, goods or services;
- the Terrorism Order 2009 applies prohibitions in respect of restricted persons, which in addition to designated persons includes those acting on their behalf or at their direction. The draft Bill does not follow this. It applies the prohibitions only to designated persons, but retains the power for the Treasury to designate those acting on a designated person's behalf or at their direction. It is hoped that this will provide greater clarity about the scope of the prohibitions;
- the draft Bill puts into statute the current practice of quarterly Parliamentary reports and establishes an independent review mechanism; and
- the draft Bill has the power to extend the provisions to overseas territories.

6.22 Further detail on the content of the draft Bill and on specific clauses can be found in the Explanatory Notes, included at Annex B.

# 7 Consultation questions and process

7.1 The draft Terrorist Asset-Freezing Bill attached outlines the Government's proposals for implementing the UNSCR 1373 (2001) regime in the UK. This consultation document seeks views on these proposals, in particular:

- Does the draft Bill set out the most effective way of meeting our UN obligations and protecting national security whilst also ensuring sufficient safeguards in respect of human rights?
- Do you have any views on the current operation of the UK's asset freezing regime?
- Does the Regulatory Impact Assessment accurately reflect the costs and benefits of the regime? Is there more that can be done to reduce the costs for the financial sector and others in implementing the regime whilst maintaining its effectiveness?

## Process and Timeline for the Consultation

7.2 Comments on this consultation should be sent by 18 June 2010 to:

Asset Freezing Unit

3/12

HM Treasury

1 Horse Guards Road

London

SW1A 2HQ

7.3 Or you can e-mail responses to: AFUconsultation@hmtreasury.gsi.gov.uk

7.4 If you have any questions about the content of this consultation paper, you can also contact the Asset Freezing Unit on + 44 (0) 20 7270 5454.

## About the Consultation Process

7.5 This Consultation has been conducted in accordance with the criteria in the Government's Code of Practice on Consultation. If you wish to have access to the full version of the Code, you can obtain it at: http://www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44420.html

**Box 7.A: The Consultation Criteria**

The Government's Code of Practice on Consultation sets out seven criteria for successful consultation:

1. When to consult - formal consultation should take place at a stage when there is scope to influence the policy outcome.
2. Duration of consultation exercises - consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Clarity of scope and impact - consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Accessibility of consultation exercise - consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. The burden of consultation - keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Responsiveness of consultation exercises - consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Capacity to consult - officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you feel that this consultation does not satisfy these criteria, or if you have any complaints or comments about the process, please contact:

The Correspondence & Enquiry Unit

2/W1

HM Treasury

1 Horse Guards Road

London

SW1A 2HQ

Tel: +44 (0)20 7270 4558

Fax: +44 (0)20 7270 4861

Public.enquiries@hmtreasury.gsi.gov.uk

## Confidentiality disclosure

7.6 You should be aware that information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

7.7 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you view the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

7.8 The Department will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

# A Draft Terrorist Asset-Freezing Bill

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# Terrorist Asset-Freezing Bill

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**PART 4**

SUPPLEMENTARY PROVISIONS

*Supervision of exercise of powers*



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A

# B I L L

TO

Make provision for imposing financial restrictions on, and in relation to, certain persons suspected of involvement in terrorist activities; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## PART 1

DESIGNATED PERSONS

### 1 Designated persons

In this Act "designated person" means—

(a) a person designated by the Treasury for the purposes of this Act, or

(b) a natural or legal person, group or entity included in the list provided for by Article 2(3) of Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism.

### 2 Treasury's power to designate persons

(1) The Treasury may designate a person for the purposes of this Act if—

(a) they have reasonable grounds for suspecting—

(i) that the person is or has been involved in terrorist activity,

(ii) that the person is owned or controlled directly or indirectly by a person within sub-paragraph (i), or

(iii) that the person is acting on behalf of or at the direction of a person within sub-paragraph (i), and

(b) they consider that it is necessary for purposes connected with protecting members of the public from terrorism that financial restrictions should be applied in relation to the person.

(2) For this purpose "terrorist activity" means any one or more of the following—

(a) the commission, preparation or instigation of acts of terrorism;
(b) conduct which facilitates the commission, preparation or instigation of such acts, or which is intended to do so;
(c) conduct which gives support or assistance to persons who are known or believed by the person concerned to be involved in conduct falling within paragraph (a) or (b) of this subsection.

(3) It is immaterial whether the acts of terrorism in question are specific acts of terrorism or acts of terrorism generally.

(4) In this Act "terrorism" has the same meaning as in the Terrorism Act 2000 (see section 1(1) to (4) of that Act).

**3 Notification of designation**

(1) Where the Treasury designate a person they must—
(a) give written notice of the designation to the designated person, and
(b) take steps to publicise the designation.

(2) Unless one or more of the following conditions is met, the Treasury must take steps to publicise the designation generally.

(3) The conditions are that—
(a) the Treasury believe that the designated person is an individual under the age of 18, or
(b) the Treasury consider that disclosure of the designation should be restricted—
(i) in the interests of national security,
(ii) for reasons connected with the prevention or detection of serious crime, or
(iii) in the interests of justice.

(4) If one or more of those conditions is met, the Treasury must inform only such persons as they consider appropriate.

(5) If that ceases to be the case, the Treasury must—
(a) give written notice of that fact to the designated person, and
(b) take steps to publicise the designation generally.

**4 Duration of designation**

(1) A designation expires at the end of the period of one year beginning with the date on which it was made, unless it is renewed.

(2) The Treasury may renew a designation at any time before it expires, if the requirements in section 2(1)(a) and (b) continue to be met.

(3) A renewed designation expires at the end of the period of one year beginning with the date on which it was renewed (or last renewed), unless it is renewed again.

(4) The provisions of section 3 (notification of designation) apply where a designation is renewed (or further renewed) as in relation to the original making of a designation.

(5) Where a designation expires the Treasury must—

(a) give written notice of that fact to the designated person, and
(b) take such steps as they consider appropriate to bring that fact to the attention of the persons informed of the designation.

**5 Variation or revocation of designation**

(1) The Treasury may vary or revoke a designation at any time.

(2) Where a designation is varied or revoked the Treasury must—
(a) give written notice of the variation or revocation to the designated person, and
(b) take such steps as they consider appropriate to bring the variation or revocation to the attention of the persons informed of the designation.

**6 Confidential information**

(1) Where the Treasury in accordance with section 3(4) inform only certain persons of a designation, they may specify that information contained in it is to be treated as confidential.

(2) A person who is provided with information that is to be treated as confidential in accordance with subsection (1), or who obtains such information, must not disclose it except with lawful authority.

(3) For this purpose information is disclosed with lawful authority only if and to the extent that—
(a) the disclosure is by, or is authorised by, the Treasury,
(b) the disclosure is by or with the consent of the designated person,
(c) the disclosure is necessary to give effect to a requirement under this Act, or
(d) the disclosure is required, under rules of court or a court order, for the purposes of legal proceedings of any description.

(4) This section does not prevent the disclosure of information that is already, or has previously been, available to the public from other sources.

(5) A person who breaches the prohibition in subsection (2) commits an offence unless the person does not know, and has no reasonable cause to suspect, that the information is to be treated as confidential.

(6) The High Court (in Scotland, the Court of Session) may, on the application of—
(a) the person who is the subject of the information, or
(b) the Treasury,
grant an injunction (in Scotland, an interdict) to prevent a breach of the prohibition in subsection (2).

## PART 2

EFFECT OF DESIGNATION

**7 Freezing of funds and economic resources**

(1) A person must not deal with funds or economic resources owned, held or controlled by a designated person.

(2) In subsection (1) "deal with" means—

(a) in relation to funds—

(i) use, alter, move, allow access to or transfer,

(ii) deal with the funds in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination, or

(iii) make any other change that would enable use, including portfolio management;

(b) in relation to economic resources, exchange or use in exchange for funds, goods or services.

(3) It is an offence for a person to contravene the prohibition in this section knowing, or having reasonable cause to suspect, that the funds or economic resources in question are held, owned or controlled by a designated person.

**8 Making funds or financial services available to a designated person**

(1) A person must not make funds or financial services available (directly or indirectly) to a designated person.

(2) It is an offence for a person to contravene the prohibition in this section knowing, or having reasonable cause to suspect, that the funds or financial services were being made available (directly or indirectly) to a designated person.

**9 Making funds or financial services available for the benefit of a designated person**

(1) A person must not make funds or financial services available to any person for the benefit of a designated person.

(2) For the purposes of this section—

(a) funds are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit; and

(b) "financial benefit" includes the discharge of a financial obligation for which the designated person is wholly or partly responsible.

(3) It is an offence for a person to contravene the prohibition in this section knowing, or having reasonable cause to suspect, that the funds or financial services were being made available for the benefit of a designated person.

**10 Making economic resources available to a designated person**

(1) A person must not make economic resources available (directly or indirectly) to a designated person.

(2) It is an offence for a person to contravene the prohibition in this section knowing, or having reasonable cause to suspect—

(a) that the economic resources were being made available (directly or indirectly) to a designated person, and

(b) that the designated person would be likely to exchange the economic resources, or use them in exchange, for funds, goods or services.

**11 Making economic resources available for the benefit of a designated person**

(1) A person must not make economic resources available to any person for the benefit of a designated person.

(2) For the purposes of this section—

(a) economic resources are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit; and

(b) "financial benefit" includes the discharge of a financial obligation for which the designated person is wholly or partly responsible.

(3) It is an offence for a person to contravene the prohibition in this section knowing, or having reasonable cause to suspect, that the economic resources were being made available for the benefit of a designated person.

**12 Exceptions**

(1) The prohibitions in sections 7 to 11 are not contravened by a relevant institution crediting a frozen account with—

(a) interest or other earnings due on the account, or

(b) payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account.

(2) The prohibitions in sections 8 and 9 on making funds available do not prevent a relevant institution from crediting a frozen account where it receives funds transferred to the account.

(3) A relevant institution must inform the Treasury without delay if it credits a frozen account in accordance with subsection (1)(b) or (2).

(4) A relevant institution that fails to comply with subsection (3) commits an offence.

(5) Section 7 (freezing of funds and economic resources) applies to any funds credited to a frozen account in accordance with this section.

(6) In this section "frozen account" means an account with a relevant institution which is held or controlled (directly or indirectly) by a designated person.

**13 Circumventing of prohibitions etc**

It is an offence for a person to participate knowingly and intentionally in activities the object or effect of which is (directly or indirectly)—

(a) to circumvent any of the prohibitions in sections 7 to 11, or

(b) to enable or facilitate the contravention of any such prohibition.

**14 Licences**

(1) The prohibitions in sections 7 to 11 do not apply to anything done under the authority of a licence granted by the Treasury.

(2) Where relevant such a licence also constitutes authorisation under Article 6 of Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism.

(3) A licence must specify the acts authorised by it and may be—
  (a) general or granted to a category of persons or to a particular person;
  (b) subject to conditions;
  (c) of indefinite duration or subject to an expiry date.

(4) The Treasury may vary or revoke a licence at any time.

(5) On the grant, variation or revocation of a licence, the Treasury must—
  (a) in the case of a licence granted to a particular person, give written notice of the grant, variation or revocation to that person;
  (b) in the case of a general licence or a licence granted to a category of persons, take such steps as the Treasury consider appropriate to publicise the grant, variation or revocation of the licence.

(6) A person commits an offence who, for the purpose of obtaining a licence, knowingly or recklessly—
  (a) provides information that is false in a material respect, or
  (b) provides or produces a document that is not what it purports to be.

(7) A person who purports to act under the authority of a licence but who fails to comply with any conditions included in the licence commits an offence.

## PART 3

INFORMATION

### 15 Reporting obligations of relevant institutions

(1) A relevant institution must inform the Treasury as soon as practicable if it knows or suspects that a relevant person—
  (a) is a designated person, or
  (b) has committed an offence under—
    (i) section 6 (confidential information), or
    (ii) any provision of Part 2 (effect of designation).

(2) A "relevant person" means—
  (a) a person who is a customer of the institution,
  (b) a person who was a customer of the institution at any time in the period of five years immediately preceding the relevant designation being made, or
  (c) a person with whom the institution has had dealings in the course of its business during that period.

(3) Where a relevant institution informs the Treasury under subsection (1) it must state—
  (a) the information or other matter on which the knowledge or suspicion is based,
  (b) any information it holds about the relevant person by which the person can be identified, and
  (c) the nature and amount or quantity of any funds or economic resources held by the relevant institution for the relevant person at any time up to five years prior to the relevant designation being made.

(4) A relevant institution that fails to comply with any requirement of subsection (1) or (3) commits an offence.

**16 Powers to request information**

(1) The Treasury may request a designated person to provide information concerning—

(a) funds and economic resources owned, held or controlled by or on behalf of the designated person, or

(b) any disposal of such funds or economic resources, whether the disposal occurred before or after the person became a designated person.

(2) The Treasury may request a designated person to provide such information as the Treasury may reasonably require about expenditure—

(a) by or on behalf of the designated person, and

(b) for the benefit of the designated person.

This power is exercisable only where the Treasury believe that it is necessary for the purpose of monitoring compliance with or detecting evasion of this Act.

(3) The Treasury may request a person acting under a licence granted under section 14 to provide information concerning—

(a) funds or economic resources dealt with under the licence;

(b) funds, economic resources or financial services made available under the licence.

(4) The Treasury may request any person in or resident in the United Kingdom to provide such information as the Treasury may reasonably require for the purpose of—

(a) monitoring compliance with or detecting evasion of this Act;

(b) obtaining evidence of the commission of an offence under this Act;

(c) establishing—

(i) the nature and amount or quantity of any funds or economic resources owned, held or controlled by or on behalf of a designated person,

(ii) the nature and amount or quantity of any funds, economic resources or financial services made available directly or indirectly to, or for the benefit of, a designated person, or

(iii) the nature of any financial transactions entered into by a designated person.

(5) The Treasury may specify the manner in which, and the period within which, information is to be provided.

(6) If no such period is specified, the information which has been requested must be provided within a reasonable time.

(7) A request may include a continuing obligation to keep the Treasury informed as circumstances change, or on such regular basis as the Treasury may specify.

**17 Production of documents**

(1) A request under section 16 may include a request to produce specified documents or documents of a specified kind or description.

(2) Where the Treasury request that documents be produced, they may—

(a) take copies of or extracts from any document so produced;
(b) request any person producing a document to give an explanation of it; and
(c) where that person is a body corporate, request any person who is a present or past officer of, or employee of, the body corporate to give such an explanation.

(3) Where the Treasury request a designated person or a person acting under a licence granted under section 14 to produce documents, that person must—
(a) take reasonable steps to obtain the documents, if not already in the person's possession or control; and
(b) keep the documents under the person's possession or control (except for the purpose of providing it to the Treasury or as the Treasury may otherwise permit).

**18 Failure to comply with request for information**

(1) A person commits an offence who—
(a) without reasonable excuse refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made under this Part;
(b) knowingly or recklessly gives any information or produces any document which is false in a material particular in response to such a request;
(c) with intent to evade the provisions of this Part, destroys, mutilates, defaces, conceals or removes any document; or
(d) otherwise wilfully obstructs the Treasury in the exercise of their powers under this Part.

(2) Where a person is convicted of an offence under this section, the court may make an order requiring that person, within such period as may be specified in the order, to comply with the request.

**19 Cooperation with UK or international investigations**

The Treasury must take such steps as they consider appropriate to cooperate with any investigation, in the United Kingdom or elsewhere, relating to the funds, economic resources or financial transactions of a designated person.

**20 General power to disclose information**

(1) The Treasury may disclose any information obtained by them in exercise of their powers under this Act (including any document so obtained and any copy or extract made of any document so obtained)—
(a) to a police officer;
(b) to any person holding or acting in any office under or in the service of—
(i) the Crown in right of the Government of the United Kingdom,
(ii) the Crown in right of the Scottish Administration, the Government of Northern Ireland or the Welsh Assembly Government,
(iii) the States of Jersey, Guernsey or Alderney or the Chief Pleas of Sark,
(iv) the Government of the Isle of Man, or

(v) the Government of any British overseas territory;

(c) to the Legal Services Commission;

(d) to the Financial Services Authority, the Jersey Financial Services Commission, the Guernsey Financial Services Commission or the Isle of Man Insurance and Pensions Authority and Financial Supervision Commission;

(e) for the purpose of giving assistance or cooperation, pursuant to the relevant Security Council Resolutions, to—

(i) any organ of the United Nations, or

(ii) any person in the service of the United Nations, the Council of the European Union, the European Commission or the Government of any country;

(f) with a view to instituting, or otherwise for the purposes of, any proceedings—

(i) in the United Kingdom, for an offence under this Act, or

(ii) in any of the Channel Islands, the Isle of Man or any British overseas territory, for an offence under a similar provision in any such jurisdiction; or

(g) with the consent of a person who, in their own right, is entitled to the information or to possession of the document, copy or extract, to any third party.

(2) In subsection (1)(g) "in their own right" means not merely in the capacity as a servant or agent of another person.

**21 Application of provisions**

(1) Nothing done under this Part is to be treated as a breach of any restriction imposed by statute or otherwise.

(2) The provisions of this Part are not to be treated as limiting the powers of the Treasury to impose conditions in connection with the discharge of their functions under section 14 (licences).

(3) Nothing in this Part is to be read as requiring a person who has acted as counsel or solicitor for any person to give or produce any privileged information or document in their possession in that capacity.

(4) Nothing in this Part authorises a disclosure that—

(a) contravenes the Data Protection Act 1998, or

(b) is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000.

## PART 4

SUPPLEMENTARY PROVISIONS

*Supervision of exercise of powers*

**22 Review of decisions by the court**

(1) This section applies to any decision of the Treasury in connection with their functions under this Act.

(2) Any person affected by such a decision may apply to the High Court or, in Scotland, the Court of Session, for the decision to be set aside.

(3) In determining whether the decision should be set aside, the court shall apply the principles applicable on an application for judicial review.

(4) If the court decides that a decision should be set aside it may make any such order, or give any such relief, as may be made or given in proceedings for judicial review.

(5) Without prejudice to the generality of subsection (4), if the court sets aside a decision of the Treasury to make a designation under this Act the court must quash the designation.

**23 Review of decisions by the court: supplementary**

(1) The provisions specified in subsection (2) apply in relation to proceedings in the High Court or the Court of Session—

(a) on an application under section 22 (review of decisions by the court), or

(b) on a claim arising from any matter to which such an application relates,

as they apply in relation to financial restrictions proceedings within the meaning of section 65 of the Counter-Terrorism Act 2008.

(2) Those provisions are—

(a) sections 66 to 68 of that Act (supplementary provisions relating to rules of court and special advocates);

(b) section 18(1)(db) of the Regulation of Investigatory Powers Act 2000 (exception to exclusion of intercept evidence); and

(c) paragraph 2(bb) of Schedule 1 to the Supreme Court Act 1981 (business allocated to the Queen's Bench Division).

**24 Treasury report on operation of Act**

(1) As soon as reasonably practicable after the end of each reporting period, the Treasury must—

(a) prepare a report about the exercise during that period of the powers conferred on them by this Act, and

(b) lay a copy of the report before Parliament.

(2) The reporting periods are—

(a) the period beginning when this Act comes into force and ending with the last day of the third month during any part of which this Act has been in force;

(b) each succeeding period of three months.

**25 Independent review of operation of Act**

(1) The Treasury must appoint a person to review the operation of this Act.

(2) The person appointed under subsection (1) must carry out a review of the operation of this Act as soon as reasonably practicable after the end of—

(a) the period of nine months beginning when this Act comes into force, and

(b) every subsequent twelve month period.

(3) The person who conducts a review under this section must send the Treasury a report on its outcome as soon as reasonably practicable after completing the review.

(4) On receiving a report under this section, the Treasury must lay a copy of it before Parliament.

(5) *The Treasury may pay the expenses of a person who conducts a review under this section and also such allowances as the Treasury determine.*

*Offences*

**26 Penalties**

(1) A person guilty of an offence under section 7, 8, 9, 10, 11 or 13 is liable—
  (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine or to both;
  (b) on summary conviction, to imprisonment for a term not exceeding the relevant maximum or to a fine not exceeding the statutory maximum or to both.

(2) A person guilty of an offence under section 6 or 14 is liable—
  (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
  (b) on summary conviction, to imprisonment for a term not exceeding the relevant maximum or to a fine not exceeding the statutory maximum or to both.

(3) For the purposes of subsections (1)(b) and (2)(b) "the relevant maximum" is—
  (a) in England and Wales, 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44));
  (b) in Scotland, 12 months;
  (c) in Northern Ireland, 6 months.

(4) A person guilty of an offence under section 15(4) or 18 is liable on summary conviction to imprisonment for a term not exceeding the relevant maximum or to a fine not exceeding level 5 on the standard scale or both.

(5) For the purposes of subsection (4) "the relevant maximum" is—
  (a) in England and Wales, 51 weeks (or 6 months, if the offence was committed before the commencement of section 281(4) and (5) of the Criminal Justice Act 2003);
  (b) in Scotland or Northern Ireland, 6 months.

**27 Extra-territorial application of offences**

(1) An offence under this Act may be committed by conduct wholly or partly outside the United Kingdom by—
  (a) a UK national, or
  (b) a body incorporated or constituted under the law of any part of the United Kingdom.

(2) In subsection (1) "UK national" means—

(a) a British citizen, a British overseas territories citizen, a British national (Overseas) or a British Overseas citizen,

(b) a person who under the British Nationality Act 1981 is a British subject, or

(c) a British protected person within the meaning of that Act.

(3) Her Majesty may by Order in Council provide that this section is to have effect as if the list of persons in subsection (1) included a body incorporated or constituted under the law of any of the Channel Islands, the Isle of Man or any British overseas territory.

(4) In this section "conduct" includes acts and omissions.

(5) Nothing in this section affects any criminal liability arising otherwise than under this section.

**28 Liability of officers of body corporate etc**

(1) Where an offence under this Act committed by a body corporate—

(a) is committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, or

(b) is attributable to any neglect on the part of any such person,

that person as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) In subsection (1) "director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(3) Subsection (1) also applies in relation to a body that is not a body corporate, with the substitution for the reference to a director of the body of a reference—

(a) in the case of a partnership, to a partner;

(b) in the case of an unincorporated body other than a partnership—

(i) where the body's affairs are managed by its members, to a member of the body;

(ii) in any other case, to a member of the governing body.

**29 Arrest without warrant in Scotland**

In Scotland, where a constable reasonably believes that a person has committed or is committing an offence under this Act, the constable may arrest that person without a warrant.

**30 Jurisdiction to try offences**

(1) Where an offence under this Act is committed outside the United Kingdom—

(a) proceedings for the offence may be taken at any place in the United Kingdom, and

(b) the offence may for all incidental purposes be treated as having been committed at any such place.

(2) In the application of subsection (1) to Scotland, any such proceedings against a person may be taken—

(a) in any sheriff court district in which the person is apprehended or is in custody, or

(b) in such sheriff court district as the Lord Advocate may determine.

(3) In subsection (2) "sheriff court district" is to be construed in accordance with the Criminal Procedure (Scotland) Act 1995 (see section 307(1) of that Act).

(4) In section 28(2) of the Counter-Terrorism Act 2008 (jurisdiction to try offences committed in another part of the UK: offences to which the section applies), after paragraph (c) insert—

"(d) an offence under any provision of the Terrorism (United Nations Measures) Act 2010.".

**31 Time limit for summary proceedings**

(1) In England and Wales an information relating to an offence under this Act that is triable by a magistrates' court may be so tried if it is laid—

(a) at any time within three years after the commission of the offence, and

(b) within twelve months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the knowledge of the prosecutor.

(2) In Scotland—

(a) summary proceedings for an offence may be commenced—

(i) before the end of the period of twelve months from the date on which evidence sufficient in the Lord Advocate's opinion to justify the proceedings came to the Lord Advocate's knowledge, and

(ii) not later than three years from the commission of the offence; and

(b) section 136(3) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (date when proceedings deemed to be commenced) applies for the purposes of this subsection as for the purposes of that section.

(3) In Northern Ireland a magistrates' court has jurisdiction to hear and determine a complaint charging the commission of a summary offence under this Act provided that the complaint is made—

(a) within three years from the time when the offence was committed, and

(b) within twelve months from the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the knowledge of the prosecutor.

(4) For the purposes of this section a certificate of the prosecutor (or, in Scotland, the Lord Advocate) as to the date on which such evidence as is referred to above came to their notice is conclusive evidence.

**32 Consent to prosecution**

(1) Proceedings for an offence under this Act (other than for a summary offence) may not be instituted—

(a) in England and Wales, except by or with the consent of the Attorney General;

(b) in Northern Ireland, except by or with the consent of the Advocate General for Northern Ireland.

(2) In relation to any time before section 27(1) of the Justice (Northern Ireland) Act 2002 (c. 26) comes into force, the reference in subsection (1)(b) to the Advocate

General for Northern Ireland is to be read as a reference to the Attorney General for Northern Ireland.

(3) Nothing in this section prevents—
(a) the arrest of a person in respect of an offence under this Act, or
(b) the remand in custody or on bail of a person charged with such an offence.

**33 Proceedings against unincorporated bodies**

(1) Proceedings for an offence under this Act alleged to have been committed by a body that is not a body corporate must be brought in the name of the body (and not in that of any of its members).

(2) For the purposes of such proceedings—
(a) any rules of court relating to the service of documents have effect as if the body were a body corporate, and
(b) the following provisions apply as they apply in relation to a body corporate—
(i) in England and Wales, section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates' Courts Act 1980,
(ii) in Scotland, sections 70 and 143 of the Criminal Procedure (Scotland) Act 1995,
(iii) in Northern Ireland, section 18 of the Criminal Justice Act (Northern Ireland) 1945 and Article 166 of and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981.

(3) A fine imposed on an unincorporated body on its conviction of an offence under this Act must be paid out of the funds of the body.

*Miscellaneous*

**34 Service of notices**

(1) This section applies in relation to any notice to be given to a person by the Treasury under—
section 3(1)(a) (notice of designation),
section 5(2)(a) (notice of variation or revocation of designation), or
section 14(5)(a) (notice of grant, variation or revocation of licence).

(2) Any such notice may be given—
(a) by posting it to the person's last known address, or
(b) where the person is a body corporate, by posting it to the registered or principal office of the body corporate.

(3) Where the Treasury do not have an address for the person, they must make arrangements for the notice to be given to the person at the first available opportunity.

**35 Crown application**

(1) This Act binds the Crown.

(2) No contravention by the Crown of a provision of this Act makes the Crown criminally liable.

(3) The High Court or, in Scotland, the Court of Session may, on the application of a person appearing to the court to have an interest, declare unlawful any act or omission of the Crown that constitutes a contravention of a provision of this Act.

(4) Nothing in this section affects Her Majesty in her private capacity.
This is to be construed as if section 38(3) of the Crown Proceedings Act 1947 (meaning of Her Majesty in her private capacity) were contained in this Act.

*Interpretation*

**36 Meaning of "funds" and "economic resources"**

(1) In this Act, "funds" means financial assets and benefits of every kind, including (but not limited to)—
- (a) cash, cheques, claims on money, drafts, money orders and other payment instruments;
- (b) deposits with relevant institutions or other persons, balances on accounts, debts and debt obligations;
- (c) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivative products;
- (d) interest, dividends or other income on or value accruing from or generated by assets;
- (e) credit, rights of set-off, guarantees, performance bonds or other financial commitments;
- (f) letters of credit, bills of lading, bills of sale;
- (g) documents providing evidence of an interest in funds or financial resources;
- (h) any other instrument of export financing.

(2) In this Act, "economic resources" means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services.

**37 Meaning of "financial services"**

(1) In this Act, "financial services" means any service of a financial nature, including (but not limited to)—
- (a) insurance-related services consisting of—
  - (i) direct life assurance;
  - (ii) direct insurance other than life assurance;
  - (iii) reinsurance and retrocession;
  - (iv) insurance intermediation, such as brokerage and agency;
- (b) banking and other financial services consisting of—
  - (i) accepting deposits and other repayable funds;
  - (ii) lending (including consumer credit, mortgage credit, factoring and financing of commercial transactions);
  - (iii) financial leasing;

(iv) payment and money transmission services (including credit, charge and debit cards, travellers' cheques and bankers drafts);
(v) providing guarantees or commitments;
(vi) financial trading (as defined in subsection (2) below);
(vii) participating in issues of any kind of securities (including underwriting and placement as an agent, whether publicly or privately) and providing services related to such issues;
(viii) money brokering;
(ix) settlement and clearing services for financial assets (including securities, derivative products and other negotiable instruments);
(x) providing or transferring financial information, financial data processing or related software (but only by suppliers of other financial services);
(xi) providing advisory and other auxiliary financial services in respect of any activity listed in paragraphs (i) to (x) (including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy).

(2) In subsection (1)(b)(vi), "financial trading" means trading for own account or for account of customers, whether on an investment exchange, in an over-the counter market or otherwise, in—
(a) money market instruments (including cheques, bills and certificates of deposit;
(b) foreign exchange;
(c) derivative products (including futures and options);
(d) exchange rates and interest rate instruments (including products such as swaps and forward rate agreements);
(e) transferable securities;
(f) other negotiable instruments and financial assets (including bullion).

**38 Meaning of "relevant institution"**

(1) In this Act "relevant institution" means-
(a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 (permission to carry on regulated activity);
(b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule as a result of qualifying for authorisation under paragraph 12 of that Schedule to accept deposits; or
(c) an undertaking which by way of business—
(i) operates a currency exchange office,
(ii) transmits money (or any representation of monetary value) by any means, or
(iii) cashes cheques that are made payable to customers.

(2) The definition of "relevant institution" in subsection (1) must be read with section 22 of the Financial Services and Markets Act 2000, any relevant order under that section and Schedule 2 to that Act.

**39 Interpretation: general**

(1) In this Act—

"designated person" has the meaning given by section 1;

"document" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include producing a copy of the information in legible form;

"economic resources" has the meaning given by section 36(2);

"financial services" has the meaning given by section 37;

"funds" has the meaning given by section 36(1);

"relevant institution" has the meaning given by section 38;

"the relevant Security Council resolutions" has the meaning given by subsection (2) below.

(2) For the purposes of this Act "the relevant Security Council resolutions" are—

(a) resolution 1373 (2001) adopted by the Security Council of the United Nations on 28th September 2001, and

(b) resolution 1452 (2002) adopted by the Security Council of the United Nations on 20th December 2002.

(3) The Treasury may by order amend subsection (2) so as to add further relevant Security Council resolutions or remove any that are superseded.

(4) Any such order must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

*Final provisions*

**40 Expenses**

*There shall be paid out of money provided by Parliament any expenses incurred by the Treasury under or by virtue of this Act.*

**41 Consequential amendments, repeals and revocations**

The Schedule contains amendments, repeals and revocations consequential on the provision made by this Act.

**42 Savings**

(1) On and after the coming into force of this Act any designation made, or licence granted, by the Treasury under—

(a) the Terrorism (United Nations Measures) Order 2001 (S.I. 2001/3365),

(b) the Terrorism (United Nations Measures) Order 2006 (S.I. 2006/2657), or

(c) the Terrorism (United Nations Measures) Order 2009 (S.I. 2009/1747),

has effect as a designation or licence under this Act.

(2) Subsection (1) has effect notwithstanding that the Order concerned was not validly made under, or that any provision of it was not within the power conferred by, section 1 of the United Nations Act 1946.

(3) Any such designation ceases to have effect at the end of the period of three months after this Act comes into force unless renewed (or revoked) by the Treasury under this Act.

**43 Short title, etc**

(1) This Act is the Terrorist Asset-Freezing Act 2010.

(2) This Act comes into force at the beginning of the day following that on which it is passed.

(3) If the Security Council of the United Nations takes any decision that has the effect of terminating the operation of the relevant Security Council resolutions, in whole or in part, the Treasury must lay before Parliament a draft order repealing this Act, in whole or in part, in accordance with the decision.

(4) Any such order must be made by statutory instrument and is not to be made unless the draft is approved by a resolution of each House of Parliament.

(5) This Act extends to England and Wales, Scotland and Northern Ireland.

(6) Her Majesty may by Order in Council direct that the provisions of this Act extend, with such adaptations or other modifications as appear to Her Majesty to be appropriate, to any of the Channel Islands, the Isle of Man or any British overseas territory.

# SCHEDULE

Section 41

## CONSEQUENTIAL AMENDMENTS, REPEALS AND REVOCATIONS

## PART 1

## CONSEQUENTIAL AMENDMENTS

*Money Laundering Regulations 2007 (S.I. 2007/2157)*

1 In regulation 2(1) of the Money Laundering Regulations 2007 (interpretation), in the definition of "terrorist financing"—

(a) omit sub-paragraph (c), and

(b) for sub-paragraph (e) substitute—

"(e) sections 7 to 11 (prohibitions relating to the freezing of funds etc of designated persons) and 13 (circumventing of prohibitions etc) of the Terrorist Asset-Freezing Act 2010;".

*Transfer of Funds (Information on the Payer) Regulations 2007 (S.I. 2007/3298)*

2 In regulation 2(1) of the Transfer of Funds (Information on the Payer) Regulations 2007 (interpretation), in the definition of "terrorist financing"—

(a) omit sub-paragraph (c), and

(b) for sub-paragraph (e) substitute—

"(e) sections 7 to 11 (prohibitions relating to the freezing of funds etc of designated persons) and 13 (circumventing of prohibitions etc) of the Terrorist Asset-Freezing Act 2010;".

*Payment Services Regulations 2009 (S.I. 2009/209)*

3 In regulation 13(4) of the Payment Services Regulations 2009 (conditions for registration as a small payment institution)—

(a) in sub-paragraph (d) omit the words from "article 7" (where it first occurs) to "2006 or", and

(b) for sub-paragraph (da) substitute—

"(da) an offence under section 7, 8, 9, 10, 11 or 13 (prohibitions relating to the freezing of funds etc of designated persons) of the Terrorist Asset-Freezing Act 2010;".

## PART 2

### CONSEQUENTIAL REPEALS AND REVOCATIONS

| *Reference* | *Extent of repeal or revocation* |
|---|---|
| Terrorism (United Nations Measures) Order 2001 (S.I. 2001/3365) | The whole instrument. |
| Financial Services and Markets Act 2000 (Consequential Amendments) (No.2) Order 2001 (S.I. 2001/3801) | Article 2. |
| Al Qa'ida and Taliban (United Nations Measures) Order 2002 (S.I. 2002/111) | Article 1(6). |
| Terrorism (United Nations Measures) Order 2001 (Amendment) Regulations 2003 (S.I. 2003/1297) | The whole instrument. |
| Terrorism (United Nations Measures) Order 2001 (Amendment) Regulations 2005 (S.I. 2005/1525) | The whole instrument. |
| Serious Organised Crime and Police Act 2005 (Powers of Arrest) (Consequential Amendments) Order 2005 (S.I. 2005/3389) | Article 15. |
| Terrorism (United Nations Measures) Order 2006 (S.I. 2006/2657) | The whole instrument. |
| Money Laundering Regulations 2007 (S.I. 2007/2157) | Regulation 2(1)(c). |
| Transfer of Funds (Information on the Payer) Regulations (S.I. 2007/3298) | Regulation 2(1)(c). |
| Counter-Terrorism Act 2008 | In section 64(1), paragraphs (a), (c) and (e).<br>Section 75(2)(d).<br>In Part 4 of Schedule 9, the entries relating to—<br>(a) the Terrorism (United Nations Measures) Order 2001, and<br>(b) the Terrorism (United Nations Measures) Order 2006. |
| Payment Services Regulations 2009 (S.I. 2009/209) | In regulation 13(4)(d), the words from "article 7" (where it first occurs) to "2006 or". |
| Terrorism (United Nations Measures) Order 2009 (S.I. 2009/1747) | The whole instrument. |

| *Reference* | *Extent of repeal or revocation* |
|---|---|
| Financial Restrictions Proceedings (UN Terrorism Orders) Order 2009 (S.I. 2009/1911) | The whole instrument. |
| Terrorism (United Nations Measures) Order (Consequential Amendments) Regulations 2009 (S.I. 2009/1912) | The whole instrument. |
| Terrorist Asset-Freezing (Temporary Provisions) Act 2010 | The whole Act |

# B Explanatory notes

*These notes refer to the Terrorist Asset-Freezing Bill as introduced in the House of Commons on [xxx]] 2010*

# TERRORIST ASSET-FREEZING BILL

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## EXPLANATORY NOTES

### INTRODUCTION

1. These Explanatory Notes relate to the Terrorist Asset-Freezing Bill as introduced in the House of Commons on [xxxxx] 2010. They have been prepared by the Treasury in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

### BACKGROUND

3. The purpose of the Bill is to give effect in the United Kingdom to resolution 1373 (2001) adopted by the Security Council of the United Nations on 28th September 2001 ("resolution 1373") relating to terrorism and resolution 1452 (2002) adopted on 20th December 2002 ("resolution 1452") relating to humanitarian exemptions. It also provides for enforcement of Regulation (EC) 2580/2001 on specific measures directed at certain persons and entities with a view to combating terrorism ("the EC Regulation").

4. Resolution 1373 includes a requirement that Member States of the United Nations must (a) prevent the financing of terrorist acts, including the freezing of funds and economic resources of persons who commit or attempt to commit, terrorist acts or participate in or facilitate such acts, and (b) prohibit their nationals and those within their territories from making funds, financial services or economic resources available to such persons.

5. Resolution 1452 introduces exemptions to prohibitions on making funds, financial assets or economic resources available to permit payments necessary to meet basic humanitarian needs (such as payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, public utility charges and legal fees and expenses) and payments necessary to meet extraordinary expenses.

6. Obligations under resolution 1373 had been implemented by the Treasury by a number of Orders in Council made under section 1 of the United Nations Act 1946 (the "UN Act"). Under section 1 of the UN Act, there is a power to make an Order in Council to give effect to any decision of the UN Security Council where such provision appears "necessary or expedient for enabling those measures to be effectively applied".

7. The Orders made under section 1 of the UN Act to give effect to obligations under resolution 1373 were the Terrorism (United Nations Measures) Order 2001 (the "2001 Order"), the Terrorism (United Nations Measures) Order 2006 (the "2006 Order") and the Terrorism (United Nations Measures) Order 2009 (the "2009 Order"). In these Notes, those Orders are referred to collectively as the "UN Terrorism Orders". The 2006 Order replaced and revoked the 2001 Order save that directions designating persons under article 4 of the 2001 Order which remained in force on the date the 2006 Order came into force continued to apply and the provisions of the 2001 Order continued to apply to such directions. Similarly, the 2009 Order replaced and revoked the 2006 Order save that directions under article 4 of the 2006 Order, which remained in force on the date the 2009 Order came into force, continued to apply and the provisions of the previous Orders continued to apply to such directions.

8. On 27 January 2010 the Supreme Court decided that the 2006 Order was *ultra vires* the UN Act and on 4 February 2010 made an order quashing the 2006 Order. The effect of the Supreme Court's judgment is that primary legislation is required to give the Treasury the powers to implement its obligations under the UN resolutions.

9. The Supreme Court did not rule upon the lawfulness of the 2001 Order or the 2009 Order but both Orders are liable to be quashed on the same grounds as the 2006 Order.

10. On 4 February 2010, following the Supreme Court order, the Government announced that it proposed to legislate to provide for the temporary validity of the UN Terrorism Orders to maintain asset-freezing restrictions while the Government took steps to put in place by means of primary legislation an asset-freezing regime to comply with the obligations in resolution 1373. On 5 February 2010 the Terrorist Asset-Freezing (Temporary Provisions) Bill ("the Temporary Provisions Bill") was published, with provisions to provide for the temporary validity of the UN Terrorism Orders until this Bill is enacted.

## TERRITORIAL EXTENT AND APPLICATION

11. The Bill extends to England and Wales, Scotland and Northern Ireland. There is power to extend the Bill by Order in Council, with such adaptations or modifications as appropriate, to the Channel Islands, the Isle of Man and any British overseas territory.

12. The Bill deals only with reserved matters in respect of Scotland and excepted matters in respect of Northern Ireland. It does not confer any functions on the National Assembly for Wales, and applies to Wales in the same way as it applies to England.

13. Because the Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

14. The Bill does not contain any provisions that would require a legislative consent motion in Northern Ireland.

## COMMENTARY ON CLAUSES

## PART 1 – DESIGNATED PERSONS

### *Clause 1 – Designated persons*

15. The financial restrictions contained in the Bill apply to "designated persons". Clause 1 defines "designated person" as (a) a person designated by the Treasury or (b) a person included in the list provided for by Article 2(3) of the EC Regulation. The EC Regulation is a measure adopted by the EC to implement resolution 1373. It provides that the Council should establish a list of persons to whom asset-freezes apply. The list is made up of persons put forward for inclusion by a 'Competent Authority' in a Member State and on the basis that the Authority has taken relevant steps (for example, to prosecute for a terrorist offence or freeze assets domestically) against that person. The Treasury is a Competent Authority for the purposes of the EC Regulation.

### *Clause 2 – Treasury's power to designate persons*

16. Clause 2 contains a power which allows the Treasury to designate a person for the purposes of the Bill. *Subsection (1)* provides that the Treasury may only exercise such power if the requirements of paragraphs (a) and (b) are met. Under paragraph (a) the Treasury must have reasonable grounds for suspecting that the person is or has been involved in terrorist activity (or is owned or controlled directly or indirectly by, or is acting on behalf or at the direction of, such a person). Under paragraph (b) the Treasury can only designate such a person if they consider that it is necessary for the purpose of protecting members of the public from terrorism that financial restrictions should be applied in relation to the person.

17. *Subsections (2)* and (3) define "terrorist activity".

18. *Subsection (4)* defines "terrorism" for the purposes of the Bill by reference to the definition contained in section 1(1) to (4) of the Terrorism Act 2000.

***Clause 3 – Notification of designation***

19. Clause 3 requires the Treasury to give notice of and publicise any designations that they make. *Subsection (1)* requires the Treasury to give written notice of a person's designation to that person and to take steps to publicise the designation.

20. Under *subsection (2)*, the designation must be publicised generally, unless one of the exceptions in *subsection (3)* applies, in which case under *subsection (4)* the Treasury must inform only such persons as they consider appropriate. The conditions in *subsection (3)* are that the Treasury (a) believe that the designated person is under the age of 18 or (b) consider that disclosure of the designation should be restricted in the interests of national security, for reasons connected with the prevention or detection of serious crime, or in the interests of justice. For example, the Treasury may consider restricting the publication of a person's designation where they are concerned that a wide publication might have the consequence of revealing the nature or extent of a police or intelligence investigation.

21. *Subsection (5)* specifies that where the Treasury have publicised a person's designation to only a limited number of persons because one or more conditions in *subsection (3)* were met but such conditions subsequently cease to be met, the Treasury must give written notice of that fact to the designated person and take steps to publicise the designation generally.

***Clause 4 – Duration of designation***

22. *Subsection (1)* specifies that a designation expires after one year unless renewed. *Subsection (2)* gives the Treasury the power to renew a designation at any time before it expires provided that the requirements of clause 2(1) continue to be met. Such renewed designations also expire after one year following the date of renewal (s*ubsection (3)*) and a renewal of a designation must be notified and publicised in accordance with the provisions of clause 3 (*subsection (4)*). Upon the expiry of a designation, the Treasury must give written notice of the fact to the designated person and take appropriate steps to bring that fact to the attention of those informed of the designation (*subsection (5)*).

***Clause 5 – Variation or revocation of designation***

23. This clause gives the Treasury the power to vary or revoke a designation at any time (*subsection (1)*). Where they do so they must give written notice to the designated person and take such steps as they consider appropriate to bring the variation or revocation to the attention of those informed of the designation (*subsection (2)*).

***Clause 6 – Confidential information***

24. Clause 6 provides that where the Treasury inform only a limited number of persons of a designation the Treasury may specify that certain information contained in the notification is to be treated as confidential, and consequently it would be an offence for such persons, or persons who obtain such information, to disclose it except with lawful authority. No offence is committed if the person discloses confidential information but does not know, and has no reasonable cause to suspect, that the information is to be treated as confidential (*subsections (1), (2)* and *(5)*). *Subsection (3)* specifies the circumstances when information is disclosed with lawful authority, *subsection (4)* provides that clause 6 does not apply to information that is already, or has previously been, available to the public from other sources and *subsection (6)* allows the person who is the subject of the information or the Treasury to apply to the appropriate court to grant an injunction (or interdict in Scotland) to prevent the disclosure.

**PART 2 – EFFECT OF DESIGNATION**

***Clause 7 – Freezing of funds and economic resources***

25. Clauses 7 to 11 set out the main consequences of a person being designated. Clause 7 makes it an offence for a person to deal with funds or economic resources owned, held or controlled by a designated person if the person who is dealing knows, or has reasonable cause to suspect, that the funds or economic resources in question are owned, held or controlled by a designated person (*subsections (1)* and *(3)*). The terms "funds" and "economic resources" are defined in clause 36.

26. *Subsection (2)* provides the meaning of "deal with" for the purpose of clause 7.

***Clause 8 – Making funds or financial services available to a designated person***

27. Clause 8 makes it an offence for a person to make funds or financial services available (directly or indirectly) to a designated person if the person making the funds or financial services available knows, or has reasonable cause to suspect, that the funds or financial services were being made available (directly or indirectly) to a designated person. The term "financial services" is defined in clause 37.

***Clause 9 – Making funds or financial services available for the benefit of a designated person***

28. This clause makes it an offence for a person to make funds or financial services available to any person for the benefit of a designated person if the person making the funds or financial services available knows, or has reasonable cause to suspect, that the funds or financial services were being made available for the benefit of a designated person. In contrast to the prohibition in clause 8, which prohibits the making available of funds or financial services, directly or indirectly, to the designated person, the clause 9 prohibition relates to the making available of funds or financial services to third parties but which are for the benefit of, or give rise to a benefit to, the designated person.

29. *Subsection (2)* provides that for the purposes of clause 9, funds or financial services are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit, where "financial benefit" includes the discharge of a financial obligation for which the designated person is wholly or partly responsible. No particular threshold level or amount of financial benefit is specified as constituting a "significant" financial benefit. Whether a financial benefit is "significant" is dependent on the circumstances of each particular case. Various factors may lead to a conclusion that a financial benefit is or is not significant, including the size or value of the financial benefit, the frequency with which the

financial benefit is conferred on the designated person and the nature of the financial benefit.

***Clause 10 – Making economic resources available to a designated person***

30. Clause 10 makes it an offence for a person to make economic resources available (directly or indirectly) to a designated person if the person making the economic resources available knows, or has reasonable cause to suspect, (a) the economic resources were being made available (directly or indirectly) to a designated person and (b) the designated person would be likely to exchange the economic resources, or use them in exchange, for funds, goods or services.

***Clause 11 – Making economic resources available for the benefit of a designated person***

31. This clause makes it an offence for a person to make economic resources available to any person for the benefit of a designated person if the person making the economic resources available knows, or has reasonable cause to suspect, that the economic resources were being made available for the benefit of a designated person. While the prohibition in clause 10 prohibits the making available of economic resources to the designated person, the clause 11 prohibition relates to the making available of economic resources to third parties but which are for the benefit of, or give rise to a benefit to, the designated person.

32. As is the case under clause 9(2), the prohibition in clause 11 is only engaged if the designated person obtains, or is able to obtain, a significant financial benefit as a consequence of the making available of economic resources to the third party.

***Clause 12 – Exceptions***

33. Clause 12 sets out various activities which do not contravene the prohibitions in clauses 7 to 11 of the Bill. *Subsection (1)* provides that relevant institutions (defined in clause 38) which credit frozen accounts with interest or other earnings due on the account, or payments due under contracts, agreements or obligations that were concluded or arose before the account became frozen, are not in breach of the prohibitions. *Subsection (2)* exempts from the prohibitions in clauses 8 and 9 relevant institutions which credit frozen accounts where they receive funds transferred to a frozen account.

34. *Subsection (3)* requires a relevant institution to inform the Treasury without delay if it credits a frozen account in accordance with *subsections (1)* and *(2)* and *subsection (4)* makes it an offence for a relevant institution to fail to do so. *Subsection (5)* has the effect that any funds credited to a frozen account under a clause 12 exemption become frozen once they have been so credited and *subsection (6)* defines "frozen account".

***Clause 13 – Circumventing of prohibitions etc***

35. Under this clause it is an offence for a person knowingly and intentionally to participate in activities the object or effect of which is (whether directly or indirectly) to circumvent, or enable or facilitate the contravention of, the prohibitions in clauses 7 to 11 of the Bill.

***Clause 14 – Licences***

36. Clause 14 provides that persons may take any actions which would otherwise breach the prohibitions in clauses 7 to 11 of the Bill if they do so under authority of a licence granted by the Treasury (*subsection (1)*). The Treasury have the power to vary or revoke a licence at any time (*subsection (4)*). *Subsection (2)* provides that, where relevant, such a licence also constitutes authorisation under Article 6 of the EC Regulation. Article 6 provides a similar power to Competent Authorities to authorise actions which would otherwise breach the prohibitions under the EC Regulation.

37. *Subsection (3)* deals with the contents, scope and duration of licences issued by the Treasury. A licence must specify the acts authorised by it and may be (a) general or granted to a category of persons or to a particular person, (b) subject to conditions and (c) of indefinite duration or subject to an expiry date.

38. *Subsection (5)* sets out the notification requirements on the Treasury in the event that they grant, vary or revoke a licence, which are that they give written notice of the grant, variation or revocation to the person to whom the licence is granted or, if it is a general licence or granted to a category of persons, they take such steps as they consider appropriate to publicise the grant, variation or revocation.

39. *Subsection (6)* makes it an offence for a person to knowingly or recklessly provide information that is false in a material respect, or provide or produce a document that is not what it purports to be, for the purpose of obtaining a licence. Under *subsection (7)* it is an offence for a person who purports to act under the authority of a licence to fail to comply with any conditions imposed on that person by the licence.

## PART 3 – INFORMATION

### *Clause 15 – Reporting obligations of relevant institutions*

40. Clause 15 imposes an obligation on relevant institutions to inform the Treasury as soon as practicable if they know or suspect that a relevant person is a designated person or has committed an offence under clause 6 (confidential information) or any provision of Part 2 (effect of designation) (*subsection (1)*). *Subsection (2)* defines "relevant person" as an existing customer of the institution, a person who has been a customer of the institution within the previous 5 years of the designation, or a person with whom the institution has had dealings in the course of business during that period. *Subsection (3)* sets out the information that the relevant institutions must provide to the Treasury and *subsection (4)* makes it an offence for a relevant institution to fail to comply with any requirement of *subsections (1)* or *(3)*.

### *Clause 16 – Powers to request information*

41. Clause 16 gives the Treasury the power to request information from designated persons and others.

42. *Subsection (1)* gives the Treasury the power to request information from a designated person concerning funds and economic resources owned, held or controlled by or on behalf of that person and any disposal of such funds or economic resources, whether the disposal occurred before or after the person became a designated person.

43. *Subsection (2)* gives the Treasury the power, exercisable only where the Treasury believe it is necessary for the purposes of monitoring compliance with or detecting evasion of the Bill, to request from a designated person such information as they may reasonably require about expenditure by or on behalf of the designated person and for such person's benefit.

44. *Subsection (3)* allows the Treasury to request information from a person acting under a licence concerning funds, economic resources and financial services dealt with or made available under the licence.

45. *Subsection (4)* gives the Treasury the power to request any person in, or resident in, the UK to provide information for the purpose of monitoring compliance with or detecting evasion of the Bill, obtaining evidence of the commission of an offence under the Bill and establishing the nature and amount or quantity of any funds, economic resources or financial services owned, held or controlled by or on behalf of, or made available to or for the benefit of, a designated person and to establish the nature of any financial

transactions entered into by the designated person.

46. *Subsection (5)* allows the Treasury to specify the manner in which, and the period within which, information is to be provided, although *subsection (6)* provides that if no period is specified, it must be provided within a reasonable time. *Subsection (7)* specifies that the Treasury is entitled to impose a continuing obligation to be informed as circumstances change or on such regular basis as they specify.

***Clause 17 – Production of documents***

47. Clause 17 provides that where the Treasury make a request for information under clause 16, they may request that specified documents or documents of a specified kind or description are produced *(subsection (1)*).

48. *Subsection (2)* allows the Treasury to take copies or extracts from any such document and request any person producing a document (or, if the person producing the document is a body corporate, any present or past officer or employee of such body) to give an explanation of it.

49. *Subsection (3)* requires that a designated person or a person acting under a licence, who is requested to produce documents, must take reasonable steps to obtain the documents (if not in the person's possession or control) and keep the documents (if they have them already).

***Clause 18 – Failure to comply with request for information***

50. This clause makes it an offence for a person to (a) without reasonable excuse, refuse or fail within the time and in the manner specified (or, within a reasonable time if no time is specified) to comply with any information request under Part 3 of the Bill, (b) knowingly or recklessly give any information or produce any document which is false in a material particular in response to such a request, (c) with intent to evade the provisions of Part 3, destroy, mutilate, deface, conceal or remove any document, or (d) otherwise wilfully obstruct the Treasury in the exercise of their powers under Part 3 *(subsection (1)*). *Subsection (2)* provides that where a person is convicted of any such offence, the court may make an order requiring that person to comply with the request.

***Clause 19 – Cooperation with UK or international investigations***

51. Clause 19 requires the Treasury to take such steps as they consider appropriate to cooperate with any investigation, in the UK or elsewhere, relating to the

funds, economic resources or financial transactions of a designated person.

***Clause 20 - General power to disclose information***

52. This clause gives the Treasury power to disclose any information obtained by them in exercise of their powers under the Bill to various people and entities, including (a) any police officer, (b) any person holding or acting in any office under or in the service of the Crown in right of the Government of the UK, the Scottish Administration, the Government of Northern Ireland or the Welsh Assembly Government, the Channel Island States, the governments of the Isle of Man or any British overseas territory, (c) the Legal Services Commission and (d) the respective financial regulators in the above jurisdictions (*subsection (1)(a) to (d)*).

53. The Treasury may also disclose information to any organ of the UN or any person in the service of the UN, the Council of the European Union, the European Commission or the Government of any country for the purpose of giving assistance or cooperation, pursuant to certain UN Security Council Resolutions (defined in *clause 39(2)* to *(4)*) (*subsection (1)(e)*).

54. Information can be disclosed with a view to instituting, or otherwise for the purposes of, any proceedings in the UK for an offence under the Bill or in any of the Channel Islands, the Isle of Man or any British overseas territory for an offence under a similar provision in any such jurisdiction (*subsection (1)(f)*).

55. *Subsection (1)(g)* further allows information to be disclosed to any third party with the consent of a person who, in their own right, is entitled to the information or to possession of the document, copy or extract (*subsection (2)* defines "in their own right").

***Clause 21 – Application of provisions***

56. This clause includes some general provisions, including (a) clarification that nothing done under Part 3 of the Bill is to be treated as a breach of any restriction imposed by statute or otherwise (*subsection (1)*), (b) stipulation that nothing in Part 3 is to be treated as limiting the powers of the Treasury to impose conditions in connection with the discharge of their functions under clause 14 (licences) (*subsection (2)*) and (c) clarification that no solicitor or counsel is required to produce any privileged information or document (*subsection (3)*). *Subsection (4)* makes clear that nothing in Part 3 of the Bill authorises a disclosure by the Treasury that contravenes the Data Protection Act 1998 or is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000.

## PART 4 – SUPPLEMENATARY PROVISIONS

### Supervision of exercise of powers

***Clause 22 – Review of decisions by the court***

57. Clause 22 provides for the review and setting aside of any decisions made by the Treasury in connection with their functions under the Bill (*subsection (1)*). Under *subsection (2),* any person affected by such a decision may apply to the High Court or, in Scotland, the Court of Session, for the decision to be set aside.

58. *Subsection (3)* specifies that in determining whether a decision should be set aside, the court shall apply the principles applicable on an application for judicial review. If the court decides that a decision should be set aside, the court may make any order, or grant any relief, as may be made or given in judicial review proceedings (*subsection (4)*), although if the court sets aside a decision to make a designation, it is obliged to quash that designation (*subsection (5)*).

***Clause 23 – Review of decisions by the court: supplementary***

59. This clause specifies that various legislative provisions which apply in relation to financial restrictions proceedings within the meaning of section 65 of the Counter-Terrorism Act 2008 (the "CT Act") are also to apply in the same way to proceedings in the High Court or the Court of Session (a) on an application under clause 22 (review of decisions by the court) or (b) on a claim arising from any matter to which such an application relates (*subsection (1)*). Those legislative proceedings are set out in *subsection (2)* and are as follows.

    a. *Sections 66 to 68 of the CT Act*. These sections were introduced to make provision about the rules of court for applications to set aside decisions under the 2006 Order and similar Orders, and are now applied to this Bill. They require the maker of the rules of court to have regard to both the need for a proper review of the decision subject to challenge, and the need to ensure that disclosures are not made where this would be contrary to the public interest. They also contain provisions requiring rules of court to include rules in relation to applications by the Treasury to withhold material from disclosure and provisions relating to the appointment of a special advocate in financial restrictions proceedings. A special advocate is a qualified lawyer who has passed through the Government's security vetting process, whose role is to represent the interests of a party to the proceedings (including any appeal) in circumstances where that party and his own legal representative are excluded from the proceedings. This would be necessary in asset- freezing related proceedings where, for

example, closed source evidence is adduced. The special advocate is appointed by the appropriate law officer.

b. *Section 18(1)(db) of the Regulation of Investigatory Powers Act 2000 ("RIPA")*. Section 17 of RIPA contains a general prohibition on the use of intercepted communications in legal proceedings. Section 18 of RIPA lists certain exceptions to that general prohibition and paragraph (1)(db) was inserted by section 69 of the CT Act so as to enable the disclosure of intercepted communications in financial restrictions proceedings.

c. *Paragraph 2(bb) of Schedule 1 to the Supreme Court Act 1981*. This paragraph was added by section 71 of the CT Act and provides that financial restrictions proceedings are to be allocated to the Queen's Bench Division.

***Clause 24 – Treasury report on operation of Act***

60. Clause 24 requires the Treasury to prepare and lay before Parliament a report about the exercise of the powers conferred on them by the Bill every three months after the day the Bill is passed.

***Clause 25 – Independent review of operation of Act***

61. This clause requires the Treasury to appoint a person to review the operation of the Bill and for that person to carry out such a review after a period of 9 months after the Bill is passed and every subsequent 12 month period (*subsections (1)* and *(2)*). The reviewer must send the Treasury a report as soon as practicable after completion of the review (*subsection (3)*) and the Treasury must lay such report before Parliament (*subsection (4)*). The Treasury may pay the expenses and allowances of the reviewer (*subsection (5)*).

**Offences**

***Clause 26 – Penalties***

62. Clause 26 provides for penalties in relation to breaches of the prohibitions in the Bill. *Subsection (1)* provides that a person guilty of any of the offences under section 7, 8, 9, 10, 11 or 13 is, on conviction on indictment, liable to a maximum of 7 years' imprisonment or to a fine or to both or, on summary conviction, to imprisonment for a term not exceeding the "relevant maximum" (this term is defined in *subsection (3)*) or to a fine not exceeding the statutory

maximum (which is currently set at £5,000) or to both.

63. *Subsection (2)* provides that a person guilty of an offence under clause 6 (confidential information) or clause 14 (licences) is liable, on conviction on indictment, to not more than 2 years' imprisonment or to a fine or to both or, on summary conviction, to imprisonment not exceeding the "relevant maximum" or to a fine not exceeding the statutory maximum or to both.

64. *Subsection (3)* defines "the relevant maximum" for the purposes of *subsections (1)* and *(2)* as being 12 months in England and Wales (or 6 months if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003), 12 months in Scotland and 6 months in Northern Ireland.

65. *Subsection (4)* provides that a person guilty of an offence under clause 15(4) (failure by relevant institutions to comply with reporting obligations) or 18 (failure to comply with request for information) is liable on summary conviction to imprisonment for a term not exceeding the "relevant maximum" or to a fine not exceeding £5,000 or both. For the purposes of *subsection (4)*, the "relevant maximum" is, in England and Wales, 51 weeks (or 6 months if the offence was committed before the commencement of section 281(4) and (5) of the Criminal Justice Act 2003) and, in Scotland or Northern Ireland, 6 months (*subsection (5)*).

***Clause 27 – Extra-territorial application of offences***

66. This clause provides that an offence under the Bill may be committed by a UK national or UK incorporated body even where the conduct in question (which may include acts or omissions) is wholly or partly outside the UK. *Subsection (2)* defines "UK national" as a British citizen, a British overseas territories citizen, a British national (Overseas), a British Overseas citizen, a person who under the British Nationality Act 1981 is a British subject or a British protected person within the meaning of that Act. *Subsection (3)* further provides that the application of clause 27 can be extended by way of Order in Council to bodies incorporated or constituted under the law of any of the Channel Islands, the Isle of Man or any British overseas territory. *Subsection (5)* specifies that nothing in clause 27 affects any criminal liability arising otherwise than under clause 27.

***Clause 28 – Liability of officers of body corporate etc***

67. Clause 28 provides that if an offence under the Bill is committed by a person other than a natural person, such as a body corporate, partnership or other unincorporated body, with the consent or connivance of any officer of that body or partnership, that officer as well as the body or partnership is guilty of

the offence and is liable to be proceeded against and punished accordingly.

***Clause 29 – Arrest without warrant in Scotland***

68. Clause 29 provides a power to a constable in Scotland to arrest a person without a warrant where the constable reasonably believes that such person has committed or is committing an offence under the Bill.

***Clause 30 – Jurisdiction to try offences***

69. Clause 30 provides that proceedings against a person in relation to offences under the Bill committed outside the UK may be taken at any place in the UK and the offence shall, for all incidental purposes, be treated as having been committed there (*subsection (1)*). *Subsection (2)* specifies that in the application of *subsection (1)* to Scotland, any such proceedings may be taken in any sheriff court district in which the person is apprehended or in custody or in such sheriff court district as the Lord Advocate may determine. *Subsection (3)* defines "sheriff court district" by reference to the definition in section 307(1) of the Criminal Procedure (Scotland) Act 1995).

70. *Subsection (4)* inserts into section 28(2) of the Counter-Terrorism Act 2008 (jurisdiction to try offences omitted in another part of the UK: offences to which the section applies) reference to offences under the Bill, which has the effect of ensuring that proceedings in relation to offences under the Bill committed in the UK may be taken at any place in the UK and the offence shall, for all incidental purposes, be treated as having been committed there.

***Clause 31 – Time limit for summary proceedings***

71. This clause specifies that in England and Wales, Scotland and Northern Ireland summary proceedings in relation to an offence under the Bill may be brought within three years from the time the offence was committed and within 12 months from the date on which evidence sufficient in the opinion of the prosecutor (or, in Scotland, the Lord Advocate) to justify the proceedings came to such person's knowledge.

***Clause 32 – Consent to prosecution***

72. Clause 32 provides that proceedings for an offence under the Bill other than for a summary offence may not be instituted except by or with the consent of, in England and Wales, the Attorney General and, in Northern Ireland, the Advocate General (*subsection (1)*). *Subsection (2)* provides that, in relation to any time before section 27(1) of the Justice (Northern Ireland) Act 2002 comes into force (that is, before police and judicial matters are devolved to

Northern Ireland), the reference in *subsection (1)* to the Advocate General for Northern Ireland is to be read as a reference to the Attorney General for Northern Ireland. *Subsection (3)* provides that nothing in clause 32 prevents the arrest or remanding in custody or on bail of a person charged with an offence under the Bill.

***Clause 33 – Proceedings against unincorporated bodies***

73. Clause 33 deals with proceedings in relation to offences committed under the Bill by a body which is not a body corporate, in particular specifying that such proceedings must be brought in the name of the body rather than in that of any of its members (*subsection (1)*). *Subsection (2)* makes provision for unincorporated bodies to be treated in the same way as bodies corporate in such proceedings, including in relation to rules of court governing the service of documents and in relation to various legislative provisions in England and Wales, Scotland and Northern Ireland which relate to procedures in legal proceedings against corporations (for example, the appointment of a representative to enter a plea on behalf of such body). *Subsection (3)* specifies that a fine imposed on an unincorporated body on its conviction of an offence under the Bill must be paid out of the funds of the body.

**Miscellaneous**

***Clause 34 – Service of notices***

74. Clause 34 sets out the steps the Treasury must take in order to serve notice on a person in relation to the making, issuing, variation and revocation of a designation or a licence.

***Clause 35 – Crown application***

75. Clause 35 provides that the Crown is bound by the provisions of the Bill (*subsection (1)*) but will not be held criminally liable if it contravenes any such provision (*subsection (2)*). A person may, if it appears to the court that such person has an interest, apply to the court to declare unlawful any act or omission of the Crown that constitutes a contravention of a provision of the Bill (*subsection (3)*). *Subsection (4)* ensures that nothing in clause 35 affects Her Majesty in her private capacity (this provision defines "her private capacity" by reference to section 38(3) of the Crown Proceedings Act 1947).

**Interpretation**

***Clause 36 – Meaning of "funds" and "economic resources"***

76. This clause defines what is meant for the purposes of the Bill by "funds" and "economic resources", such terms being integral to the prohibitions in clauses 7 to 11 of the Bill.

***Clause 37 – Meaning of "financial services"***

77. This clause defines what is meant for the purposes of the Bill by "financial services". This is a key term for the purposes of the prohibitions in clauses 8 and 9 of the Bill.

***Clause 38 – Meaning of "relevant institution"***

78. This clause defines what is meant for the purposes of the Bill by "relevant institution". This is a key term for the provisions in clause 15 (reporting obligations of relevant institutions). The definition of relevant institutions includes those authorised under the Financial Services and Markets Act 2000 to carry on a regulated activity (as defined under section 22 of that Act), and Money Exchange bureaux.

***Clause 39 – Interpretation***

79. This clause provides cross-references to the clauses in which various terms used in the Bill are defined and defines "document" and "the relevant Security Council resolutions" for the purposes of the Bill. *Subsection (3)* gives the Treasury the power, exercisable by Order, to amend the list of relevant Security Council resolutions.

**Final provisions**

***Clause 40 - Expenses***

80. This clause provides that there shall be paid out of money provided by Parliament any expenses incurred by the Treasury under or by virtue of the Bill.

***Clause 41 – Consequential amendments, repeals and revocations***

81. This clause introduces the Schedule, which contains amendments, repeals and revocations consequential on the provisions of the Bill. It includes the repeal of the Terrorist Asset-Freezing (Temporary Provisions) Bill.

***Clause 42 – Savings***

82. *Subsection (1)* provides that after the coming into force of the Bill, any designation made or licence granted under one of the UN Terrorism Orders will be deemed to be a designation or licence made under the Bill. *Subsection (3)* provides that any such designation or licence ceases to have effect three months after the Bill comes into force unless renewed or revoked before then.

***Clause 43 – Short title, etc***

83. This clause sets out the short title to the Bill and specifies that the Bill comes into force on the day following that on which it is passed (*subsections (1)* and *(2)*). *Subsections (3)* and *(4)* provide that the Treasury must lay before Parliament a statutory instrument to repeal part or all of the Bill (as appropriate) if the UN Security Council takes any decision that has the effect of terminating, in whole or in part, the operation of the relevant Security Council Resolutions that require the maintenance of an asset-freezing regime. *Subsection (5)* provides that the Bill extends to the whole of the UK and *subsection (6)* confers a power, exercisable by Order, to extend the Bill's provisions to any of the Channel Islands, the Isle of Man or any British overseas territory.

**FINANCIAL EFFECTS OF THE BILL**

84. The Bill imposes specific reporting requirements on relevant institutions under clause 15. Relevant institutions will already have systems in place in respect of obligations arising under the 2006 Order, the EC Regulation and other EC Regulations imposing financial restrictions on persons. These systems are also required to meet other obligations arising under money laundering legislation, notably the Proceeds of Crime Act 2002. Clause 15 will add further reporting obligations to existing burdens on relevant institutions. The Treasury have been working with financial institutions to try to identify types of information which the Treasury should seek to provide to make it quicker and easier for those institutions to undertake the necessary searches.

85. The asset-freezing regime set out in the Bill will be operated by the Treasury. Most of the provisions in the Bill are a substitute for requirements under the 2006 Order and the other UN Terrorism Orders, and are part of a wider requirement to implement asset-freezing obligations (for example, in relation to sanctions against other countries pursuant to UN Security Council Resolutions and EC Regulations). Clause 25 requires the Treasury to appoint a person to review the operation of the Bill and allows the Treasury to pay the expenses of the reviewer and such allowance as the Treasury may determine. The provisions in the Bill should not result in any significant additional public

expenditure.

## PUBLIC SECTOR MANPOWER

86. There are no public sector manpower implications arising from the Bill.

## SUMMARY OF IMPACT ASSESSMENT

87. The impact assessment is published with the Bill. Members of Parliament can obtain a copy of the impact assessment from the Vote Office.

88. The benefits are not quantifiable. The Government's policy objective is to help prevent terrrorist attacks by preventing frozen funds becoming unfrozen and used for terrorist purposes. Disrupting terrorist-related activities contributes to national security and preventing the UK financial sector from being unknowingly used to facilitate terrorism-related activities.

## COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS

89. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights.

90. The Bill confers a number of powers on the Treasury. In exercising those powers, the Treasury will be subject to the duty imposed by section 6(1) HRA not to act in a way that is incompatible with the Convention rights (subject to the limited exceptions in section 6(2)).

91. Set out below are details of the most significant human rights issues thought to arise from the Bill. In each provision where such issues are engaged the Treasury have sought to balance human rights considerations against the public interest purpose behind the provisions.

### *Protocol 1, Article 1 (protection of property)*

92. Article 1 of the First Protocol ("A1/P1") of the Convention provides that every person (natural or legal) is entitled to the peaceful enjoyment of his possessions and that no one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

93. The effect of a direction designating a person is that the person's funds and economic resources are frozen. Further provisions prohibit making funds,

economic resources or financial services available to or for the benefit of a designated person. These provisions can include restrictions on the enjoyment of the property of others (notably in relation to the household benefits of members of a designated person's household).

94. The prohibitions on the designated person impose either a deprivation of property or at least a control of the use of their property. The Treasury consider that (a) the interference is lawful because the prohibitions are sufficiently accessible and certain, (b) the interference pursues a legitimate aim which is in the general interest, namely the disrupting of persons suspected of involvement in terrorist activity from financing such activity, whether in the UK or abroad, and (c) a fair balance has been struck between the public interest and the interests of the property owner, in particular by means of a licensing system which allows controlled access to funds.

***Article 8 (respect for privacy and family life)***

95. The clauses include a number of provisions which interfere with a person's right to respect for private and family life. Any interference by a public authority must be justified as being in accordance with the law and necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

96. The collection of personal information is an interference with the right to respect for private life. The disclosure of information – such as the fact of a direction – by a public body will also involve an interference with the right to respect for private life.

97. The Treasury consider that there is a clear national security or public safety basis for such interferences and that they are in accordance with the law on the basis that they are clear and foreseeable. The decisions include clear rights to challenge decisions involving interferences and the Treasury believe that these provisions offer adequate and effective safeguards against arbitrary interference.

***Article 6 (right to a fair trial)***

98. Article 6(1) of the Convention entitles an individual to a fair and public hearing in the determination of his civil rights or obligations or any criminal charge against him. A designation made under clause 2 is likely to be a decision which impacts upon civil rights and obligations (notably the interference with rights to free enjoyment of property). Whilst not expressly set out as a qualified right, the courts, both domestically and in

Strasbourg, have acknowledged some need for qualification. Challenges to decisions under the Bill would not constitute criminal hearings and therefore the express minimum standards in Article 6(3) do not apply.

99. Clause 23(2) of the Bill applies particular provisions of the Counter-Terrorism Act 2008 to proceedings brought in respect of decisions of the Treasury under the Bill. Those provisions (similar to provisions in the Prevention of Terrorism Act 2005) were enacted in respect of challenges to asset freezes made under the UN Terrorism Orders. The provisions are directed in part at the use of "closed material" in proceedings and set up a procedure for the appointment of special advocates. The issue of the compatibility of the use of closed material and special advocates with Article 6(1) has been considered a number of times in the UK and in Strasbourg, particularly in connection with control orders. The House of Lords in *Secretary of State for the Home Department v AF (No 3)*[1] following the decision of the Grand Chamber of the European Court of Human Rights at Strasbourg in *A v United Kingdom*[2], referred to the Grand Chamber's decision that the controlled person had to be given sufficient information about the allegations against him to be able to give effective instructions to the special advocate in respect of the controlled person, and concluded that *"provided that requirement was satisfied, there could be a fair trial notwithstanding that he was not provided with the detail or sources of the evidence forming the basis of the allegations"* (para 59). Section 67(6) of the Counter-Terrorism Act 2008 provides that the special advocate procedure should not be applied where to do so would be inconsistent with Article 6.

100. The Treasury therefore believe that the provisions in the Bill are compatible with Article 6.

**COMMENCEMENT DATE**

101. The Bill will come into force on the day following that on which it obtains Royal Assent.

[1] [2009] UKHL 28.

[2] (Application No 3455/05), ruling 20 February 2009.

# C Regulatory impact assessment

# Summary: Intervention & Options

| Department /Agency: | Title: | |
|---|---|---|
| **HM Treasury** | **Terrorist Asset Freezing Bill 2010** | |
| | | **Date:** 04 February 2010 |

**Related Publications:** Terrorism (United Nations Measures) Orders 2001, 2006 and 2009; Counter-Terrorism Act 2008

**Available to view or download at:**

http://www.hm-treasury.gov.uk

**Contact for enquiries:** Asset Freezing Unit **Telephone:** 0207 270 5454

## What is the problem under consideration? Why is government intervention necessary?

United Nations Security Council Resolution 1373 (2001), made in the aftermath of the 9/11 attacks, requires states to apply asset freezing measures in relation to persons who committ or attempt to committ terrorism. The UK gave effect to these requirements by Orders in Council, implementing domestic asset freezes in accordance with UN requirements and enforcing EC terrorist asset freezes. On 27 January 2010 the Supreme Court decided that the Terrorism Order 2006 went beyond the power in section 1 of the United Nations Act 1946, under which the Order was made. Government intervention is necessary to provide the Treasury with the power to implement an asset freezing regime and prevent assets frozen under the Terrorism Order 2006 (and the Terrorism Orders 2001 and 2009- which are similarly vulnerable to being struck down) from being released and potentially diverted for terrorist purposes. It is also necessary to meet our international obligations.

## What are the policy objectives and the intended effects?

The primary purpose of the Treasury's asset freezing regime is to help prevent terrorist acts by preventing funds and economic resources from being used or diverted for terrorism. The prohibition on making financial services available to designated persons will also protect the financial sector from being unknowingly used to finance terrorist-related activities.

The Bill substantially replicates the provisions of the Terrorism Orders, providing the Treasury with the power in primary legislation to freeze the funds of persons suspected of involvement in terrorism.

## What policy options have been considered? Please justify any preferred option.

1. Do not legislate. If the Bill is not made, the financial restrictions against persons designated under the Terrorism Orders will be removed, with the consequent risk of funds being used for terrorism.

2. Pursue a Bill to restore the regime under primary legislation and maintaining existing asset freezes. Our preferred option.

## When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

HMT will keep the asset freezing regime under review and will continue to report quarterly to Parliament on use of powers. In addition, an independent person will be appointed to review the asset freezing operations nine months after the Bill receives Royal Assent and every 12 months thereafter.

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.***

Signed by the responsible Minister:

.....  .....Date: 4 / 0 2 / 2 0 1 0

# Summary: Analysis & Evidence

| | Description: |
|---|---|
| | |

**COSTS**

| ANNUAL COSTS | |
|---|---|
| **One-off** (Transition) **Yrs** | |
| **£ N/A** | |
| **Average Annual Cost** (excluding one-off) | |
| **£ N/A** | |

Description and scale of **key monetised costs** by 'main affected groups' The Bill maintains existing asset freezes under the Terrorism Orders. The financial sector already has the necessary systems and controls in place.

**Total Cost** (PV) **£**

Other **key non-monetised costs** by 'main affected groups' None expected.

**BENEFITS**

| ANNUAL BENEFITS | |
|---|---|
| **One-off** **Yrs** | |
| **£ N/A** | |
| **Average Annual Benefit** (excluding one-off) | |
| **£ N/A** | |

Description and scale of **key monetised benefits** by 'main affected groups'

**Total Benefit** (PV) **£**

Other **key non-monetised benefits** by 'main affected groups' Unquantifiable benefit of preventing currently frozen funds from being used to finance terorrism, reducing the risk to the UK's national interest and protecting the financial system from the risk of terrorist abuse, as well as furthering national security and foreign policy goals.

Key Assumptions/Sensitivities/Risks

| Price Base Year | Time Period Years | **Net Benefit Range** (NPV) **£** | **NET BENEFIT** (NPV Best estimate) **£** |
|---|---|---|---|
| | | | |

| | | | | |
|---|---|---|---|---|
| What is the geographic coverage of the policy/option? | | | UK (extendable to Overseas Territories and Crown Dependencies by SI) | |
| On what date will the policy be implemented? | | | | |
| Which organisation(s) will enforce the policy? | | | HMT, police | |
| What is the total annual cost of enforcement for these organisations? | | | £ N/A | |
| Does enforcement comply with Hampton principles? | | | Yes | |
| Will implementation go beyond minimum EU requirements? | | | No | |
| What is the value of the proposed offsetting measure per year? | | | £ N/A | |
| What is the value of changes in greenhouse gas emissions? | | | £ N/A | |
| Will the proposal have a significant impact on competition? | | | No | |
| Annual cost (£-£) per organisation (excluding one-off) | Micro **N/A** | Small **N/A** | Medium **N/A** | Large **N/A** |
| Are any of these organisations exempt? | No | No | N/A | N/A |

**Impact on Admin Burdens Baseline** (2005 Prices) (Increase - Decrease)

| Increase of £ | Decrease of £ | **Net Impact £** |
|---|---|---|

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

# Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

**International and Domestic Policy Context**

Following the 9/11 attacks, on 28th September 2001 the United Nations Security Council adopted Resolution 1373(2001) which requires Member States to freeze the assets of those involved in terrorist acts, and to prohibit funds and financial services being made available to those involved in terrorist acts.

On 27th December 2001, the European Council Common Position 2001/931/CFSP, pursuant to UNSCR 1373 (2001), established an EC-maintained list of individuals and entities involved in terrorism. Council Regulation (EC) No 2580/2001 implemented prohibitions in relation to persons on the EC list, in particular an asset freeze and prohibitions on making funds and financial services available to listed persons. The list itself is published and updated by Council Decisions or Commission Regulations.

The Terrorism (United Nations Measures) Order 2001 (S.I. 2001/3365) ("the 2001 Order") implemented the requirements of UNSCR 1373. This was replaced by the Terrorism (United Nations Measures) Order 2006 (S.I. 2006/2657) ("the 2006 Order") and subsequently by the Terrorism (United Nations Measures) Order 2009 (S.I. 2009/1747) ("the 2009 Order", together with the 2001 Order and the 2006 Order, the "Terrorism Orders"), which currently implements the requirements of UNSCR 1373 and Council Regulation (EC) No 2580/2001.

These Orders in Council were made under section 1 of the United Nations Act 1946, which authorises the Government to make an Order in Council to give effect to any decision of the UN Security Council where such provision appears to be "necessary or expedient for enabling those measures to be effectively applied."

In its judgment in the case of HM Treasury v Ahmed and Others, the Supreme Court ruled that the 2006 Order is beyond the scope of the power provided by section 1 of the UN Act 1946 and should be quashed. An application for a stay of the Court's order quashing the 2006 Order has been made by the Treasury and is being considered by the Supreme Court. The 2001 Order and the 2009 Order are vulnerable to being quashed on the same grounds as the 2006 Order.

The threat from international terrorism remains significant. This is reflected in the recent decision to raise the UK terror threat level to "severe". The Government is committed to ensuring that we retain effective tools to deal with the terrorist threat and that these are used in a fair and proportionate way, striking the right balance between protecting national security and protecting human rights.

**Policy objectives**

The counter-terrorist asset freezing regime helps prevent terrorist acts by preventing funds, economic resources or financial services from being used or diverted for terrorist purposes. It is a preventative not punitive measure that works by denying terrorists the ability to raise and move funds; containing funds already in the financial system; and disrupting the activities of those designated. It is an important and valuable tool in the fight against international terrorism that also helps prevent the UK financial sector from being unknowingly used for terrorist-related activities. The regime has been in place, in one form or other, since October 2001.

This Bill seeks to braodly reinstate the provisions of the 2009 Order in primary legislation to provide the power to freeze the assets of those reasonably suspected of involvement in terrorist activity. Provision is also made to prevent assets frozen under one of the Terrorism Orders being released and potentially diverted for terrorist purposes.

## Policy options

The Treasury has considered 2 options:

1. *Do not legislate*

The threat to the UK from international terrorism is significant. Asset freezing is a valuable counter-terrorism tool. If action is not taken, over £150,000 of frozen suspected terrorist assets will be unfrozen and other restrictions on designated persons and third parties removed. It will also not be possible to make any new domestic terrorism designations. This presents a risk to national security.

In addition, UNSCR 1373 requires all states to take measures to freeze the assets of those involved in terrorist acts, and to prohibit funds and financial services being made available to those involved in terrorist acts. Having no legislation in place will mean that the UK will no longer meet its international obligations. It could also signal a lack of commitment to counter-terrorism and damage relations with key CT partners at a time of heightened risk.

*2. Pursue a Bill to restore the regime*

Under this, our preferred option, we would seek to secure the passage of a Bill, the core provisions of which replicate those in the 2009 Order. It introduces the provision that designations under any of the Terrorism Orders which have not been revoked, will be deemed to be designations under the Bill for a period of three months. Such persons' designations will be reviewed and, where appropriate, redesignated under this new legislation.

The 2009 Order establishes, consistent with UNSCR 1373 and the provisions of Council Regulation (EC) No 2580/2001, the UK's own national regime for designating terrorist suspects at the domestic level. The 2009 Order freezes the funds of designated persons and prohibits third parties from making funds, financial services and economic resources available to or for the benefit of those persons and those acting on their behalf. Provision is made for licences to be granted for humanitarian and other purposes for certain acts to be exempted from the prohibitions. There are also reporting requirements and information gathering powers set out in the 2009 Order.

This Bill maintains the financial restrictions against persons designated under the Terrorism Orders and prevent their funds becoming unfrozen and used for terrorist purposes.

The Supreme Court judgment concerned the legal base through which we implement asset freezing. It did not question the substance of our asset freezing regime. The legislation therefore broadly reinstates the existing regime but under primary legislation, incurring minimal additional costs.

## Costs and Benefits

### Costs

The Bill imposes some specific requirements on relevant institutions. Relevant institutions already have systems in place in respect of obligations under the 2006 Order and EC Regulations imposing asset freezes on persons, as well as to meet under money laundering legislation, notably the Proceeds of Crime Act 2002. The Treasury have been working with financial institutions to try and identify types of information that the Treasury should seek to provide to make it quicker and easier for institutions to undertake the necessary searches.

The Treasury recognises that effective implementation of these measures requires sufficient good quality identifying information. This enables the assets of the designated person to be identified quickly and ensures only the correct assets are frozen by the financial services industry and others.

*The UK is committed to ensuring that at the point of designation, and thereafter, sufficient good quality identifiers are available to improve the effectiveness of asset freezing measures and avoid difficulties caused by acronyms or similar names (cases of 'mistaken identity'). This enables the assets of the target*

*to be identified quickly and helps to ensure the correct assets are frozen. To this end both the UN and EU have introduced listing procedures that set out clearly that as many specific identifiers as possible, including full name (surname, forenames), date of birth, place of birth, nationality, alias, sex, address, identification or passport number, should be provided by designating or proposing states and that these should be published at the point of designation.*

**Benefits**

The benefits are not quantifiable. The Government's policy objective is to help prevent terrrorist attacks by preventing frozen funds becoming unfrozen and used for terrorist purposes. Disrupting terrorist-related activities contributes to national security and preventing the UK financial sector from being unknowingly used to facilitate terrorism-related activities.

**Offences and penalty provisions**

Criminal offences and penalties apply in relation to non-compliance with the requirements of the Bill. These are the same as in the 2009 Order.

**Conclusion**

This Bill is required to reinstate the asset freezing regime under primary legislation and to prevent funds being used for terrorist purposes. Its passage is in the interests of national security, fulfils our international obligations, and furthers our international counter-terrorism efforts.

Regarding the **specific impact tests** in the Checklist:

**Competition assessment**

The Bill applies uniformly to all firms operating in the UK financial sector. It maintains the status quo regarding existing freezes. There should be no impact on competition among financial and credit institutions.

**Small firms**

As the Bill maintains the status quo regarding existing freezes, there should be no additional cost on small firms. There is no wider exemption for small firms generally. The costs of compliance could be proportionately higher for a smaller business to the extent that they are affected; however, as they are already regulated for the purposes of the Money Laundering Regulations 2007 and obliged to comply with financial sanctions regimes, such firms should already have compliance systems in place.

**Human Rights**

Directions made under the Terrorism Orders designating persons strike an appropriate balance between the requirements of the public interest and the requirements of the protection of an individual's rights, provision of a fair hearing and respect for privacy, and is therefore compatible with Articles 6 and 8, and Article 1 of Protocol 1 of the ECHR, as set out below:

*Article 1 Protocol 1*

In imposing a freeze on dealing with a persons funds and economic resources, a direction interferes with the peaceful enjoyment of the person's possessions and engages Article 1 of Protocol 1 of the ECHR. We consider such interference is justified in the public interest, given the public interest in preventing funds or economic resources being used for terrorist purposes. The Treasury's power to grant licences to exempt certain acts from the restrictions potentially mitigates any interference, and enables the Treasury to ensure that a fair balance is struck in any particular case.

*Article 8*

The publicising of a direction in respect of a particular person will interfere with that person's right to respect for his private and family life. We consider such interference is justified because of the public

interest in a direction being publicised as fully as possible so that the prohibitions in the order can be given the fullest effect. No new directions will be made under this Bill however.

*Article 6*

Any person affected by decisions under the Terrorism Orders may apply to the High Court to set aside those decisions, thus satisfying the requirements of article 6. Such provisions will remain in force.

**Other impacts**

The following issues have also been considered in this assessment and the Government has decided that these measures have no impact on them.

- Legal aid
- Sustainable development
- Carbon assessment and other environment
- Health
- Race, Disability, Gender equality
- Rural proofing

**Consultation**

No formal consultation has taken place outside of Government.

# Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

| Type of testing undertaken | *Results in Evidence Base?* | *Results annexed?* |
|---|---|---|
| Competition Assessment | No | No |
| Small Firms Impact Test | No | No |
| Legal Aid | No | No |
| Sustainable Development | No | No |
| Carbon Assessment | No | No |
| Other Environment | No | No |
| Health Impact Assessment | No | No |
| Race Equality | No | No |
| Disability Equality | No | No |
| Gender Equality | No | No |
| Human Rights | Yes | No |
| Rural Proofing | No | No |

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