



HM TREASURY

# Publication in draft of the Terrorist Asset-Freezing Bill

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# Publication in draft of the Terrorist Asset-Freezing Bill

Presented to Parliament by  
The Chief Secretary to the  
Treasury by Command of Her  
Majesty

February 2010



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# Terrorist Asset-Freezing Bill

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

**B**E 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—
  - (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

<i>Reference</i>	<i>Extent of repeal or revocation</i>
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). Section 75(2)(d). In Part 4 of Schedule 9, the entries relating to— (a) the Terrorism (United Nations Measures) Order 2001, and (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.

<i>Reference</i>	<i>Extent of repeal or revocation</i>
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

# **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 28<sup>th</sup> September 2001 (“resolution 1373”) relating to terrorism and resolution 1452 (2002) adopted on 20<sup>th</sup> 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 (*subsection (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 – SUPPLEMENTARY 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 terrorist 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)*<sup>1</sup> following the decision of the Grand Chamber of the European Court of Human Rights at Strasbourg in *A v United Kingdom*<sup>2</sup>, 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.

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<sup>1</sup> [2009] UKHL 28.

<sup>2</sup> (Application No 3455/05), ruling 20 February 2009.

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>HM Treasury</b>	<b>Title:</b> <b>Terrorist Asset Freezing Bill 2010</b>	
<b>Stage:</b> Final/Implementation	<b>Version:</b> 1	<b>Date:</b> 04 February 2010
<b>Related Publications:</b> 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 commit or attempt to commit 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: 4/02/2010

## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>Description:</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> 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.		
	<b>One-off</b> (Transition) <span style="float: right;"><b>Yrs</b></span>			
	<b>£ N/A</b>			
	<b>Average Annual Cost</b> (excluding one-off)			
	<b>£ N/A</b>	<b>Total Cost (PV)</b>	<b>£</b>	
Other <b>key non-monetised costs</b> by 'main affected groups' None expected.				

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups'		
	<b>One-off</b> <span style="float: right;"><b>Yrs</b></span>			
	<b>£ N/A</b>			
	<b>Average Annual Benefit</b> (excluding one-off)			
	<b>£ N/A</b>	<b>Total Benefit (PV)</b>	<b>£</b>	
Other <b>key non-monetised benefits</b> by 'main affected groups' Unquantifiable benefit of preventing currently frozen funds from being used to finance terrorism, 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	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £
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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	£
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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 28<sup>th</sup> 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 27<sup>th</sup> 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 broadly 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 terrorist 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 person's 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	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
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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