



HM Treasury

Post-legislative scrutiny of the Terrorist Asset Freezing etc. Act 2010



Post-legislative scrutiny of the Terrorist Asset Freezing etc. Act 2010

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

October 2016

Cm 9316



© Crown copyright 2016

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.uk/government/publications

Any enquiries regarding this publication should be sent to us at public.enquiries@hmtreasury.gsi.gov.uk

Print ISBN 9781474136273

Web ISBN 9781474136280

PU1965

Printed in the UK by the Williams Lea Group on behalf of the Controller of Her Majesty's Stationery Office

ID 11071633 10/16

Printed on paper containing 75% recycled fibre content minimum

Contents

		Page
Chapter 1	Introduction	3
Chapter 2	Objectives of the Terrorist Asset Freezing etc. Act 2010	5
Chapter 3	Implementation	7
Chapter 4	Secondary legislation, guidance, and other relevant material	9
Chapter 5	Other reports	11
Chapter 6	Preliminary Assessment of the Act	17

1 Introduction

1.1 This memorandum provides a preliminary assessment of the Terrorist Asset-Freezing etc. Act 2010 (“TFAFA”) and has been prepared by HM Treasury for submission to the Treasury Committee. It is published as part of the process set out in the document *Post Legislative Scrutiny – The Government’s Approach (Cm 7320)*. The figures in the memorandum cover the 17 December 2010 to 16 December 2015 (“the scrutiny period”), although where relevant, events falling outside this period have been referred to - and are clearly marked as such.

Objectives of the Terrorist Asset Freezing etc. Act 2010

2

2.1 Prior to TAFE the UK domestic asset freezing regime was given effect by a series of *Terrorism (United Nations Measures) Orders* (2001, 2006, 2009), made under the *United Nations Act 1946* ("the UN Act"). However the Orders were vulnerable to the criticism that Parliament never intended the UN Act to be used in this way. In 2010 (judgment of *Ahmed v HM Treasury* [2010] UKSC 2) the 2006 Order was declared *ultra vires* by the Supreme Court and quashed. Since the 2009 Order was made on the same grounds it was also vulnerable to quashing: in their Judgment the Court set out that "although the 2009 Order is not before the court in these proceedings, the arguments that have been directed to the 2006 Order...can be taken to apply to it also" (para.28). The government quickly legislated with the *Terrorist Asset Freezing (Temporary Provisions) Act 2010*, to provide for temporary validity of the UN Terrorism Orders in order to maintain the asset-freezing restrictions, with a view to imminently enacting permanent legislation.

2.2 It was part of the policy intention of TAFE that TAFE realise the Coalition pledge to increase the civil liberties safeguards in Bills. It therefore included a number of civil liberties provisions that were not found in the earlier Terrorism Orders:

- the legal threshold for final designation was raised from reasonable suspicion to reasonable belief
- the requirement for financial institutions to automatically search historic records was removed
- it required quarterly Parliamentary reports and established an independent review mechanism

2.3 The purpose of Part one of TAFE is to give effect in the United Kingdom to UN Security Council Resolution 1373, requiring amongst other things that UN member states freeze terrorist assets without delay. Part one 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 EU's asset freezing regime for non Daesh/Al Qaida linked terrorists external to the EU.

2.4 The purpose of Part two of TAFE is to make amendments to Schedule 7 to the *Counter-Terrorism Act 2008* ("CTA 2008"). Schedule 7 provides HM Treasury with powers by directions to impose financial restrictions in relation to persons connected with a country (a "country of concern") in response to money laundering, terrorist financing or the development or production of nuclear, radiological, biological or chemical weapons that poses a risk to the national interests of the United Kingdom, or where the Financial Action Task Force has advised that measures should be taken in relation to the country because of the risk of terrorist financing or money laundering activities.

2.5 The extent to which the implementation of TAFE has met its objectives is considered below, throughout the preliminary assessment.

3 Implementation

Commencement

3.1 The commencement of the provisions of TAFE was as follows:

- the provisions of TAFE (with the exception of Section 51 relating to the application of the CTA 2008, and those parts of Section 52, consequential amendments and repeals, and Part two of Schedules one and two relating to Section 51) commenced on 17 December 2010
- section 51, and those parts of section 52 and Part two of Schedules one and two relating to section 51 commenced on 31 March 2012 by S.I. 2011/2835
- no sections have been repealed in their entirety.

Amendment

3.2 Amendment: three sections have been amended, sections 23, 31 and 41. Please see paragraphs 6.21, 6.29, and 6.33 below for details.

Secondary legislation, guidance, and other relevant material

4

4.1 5 pieces of secondary legislation have been made under TAFE.

4.2 4 of these relate to the extension of measures to Guernsey, the Isle of Man and 12 of the 14 British Overseas Territories. Under Section 54 of TAFE Part one of TAFE may be extended, with or without modifications, to the Crown Dependencies and British Overseas Territories. In 2015 the Isle of Man enacted its own terrorist asset freezing legislation and accordingly the Isle of Man Order was revoked. The 4 Orders that have been made under Section 54 are:

- Terrorist Asset Freezing etc. Act 2010 (Isle of Man) Order 2011 (S.I. 2011/749)
- Terrorist Asset Freezing etc. Act 2010 (Guernsey) Order 2011(S.I. 2011/1082)
- Terrorist Asset Freezing etc. Act 2010 (Overseas Territories) Order 2011 (S.I. 2011/750)
- Terrorist Asset Freezing etc. Act 2010 (Isle of Man) (Revocation) Order 2015 S.I. 2015/1763)

4.3 The remaining SI was the *Terrorist Asset Freezing etc. Act 2010 (Commencement) Order 2011*(S.I. 2011/2835). This Order in Council commenced Section 51 of TAFE (relating to Northern Ireland credit unions), those parts of Section 52 that relate to section 51, paragraph 11 of Part two of Schedule one and Part two of Schedule two on 31 March 2012

4.4 The Act of Sederunt (Rules of the Court of Session Amendment No. 6) (Terrorist Asset Freezing etc. Act 2010) 2010 (S.I. 2010/459) was made under and by virtue of the powers conferred by section 5 of the Court of Session Act 1988, and sections 66 and 67 of the Counter-Terrorism Act 2008. This makes amendments to the Rules of the Court of Session 1994 in Scotland concerning the appeal of TAFE designation under Section 26 and the challenge to asset-freezing decisions under Section 27.

4.5 HM Treasury has published guidance/frequently asked questions in order to assist compliance with financial sanctions, since March 2013. These FAQs cover TAFE. A new iteration was published in April 2016: <https://www.gov.uk/government/publications/financial-sanctions-faqs>.

5 Other reports

Independent Reviewer of Terrorism Legislation Reports

5.1 The Independent Reviewer of Terrorism Legislation has published 4 reports on the operation of TAFE to date (in accordance with section 31 of TAFE, see para 6.29 below):

- First report: December 2010-September 2011 (published December 2011):
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/223465/fin_sanc_report_on_terrorist_asset_freezing_151211.pdf
- Second Report: September 2011 – September 2012 (published December 2012):
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266417/fin_sanc_2nd_report_operation_of_tafa2010.pdf
- Third Report: September 2012 – September 2013 (published December 2013):
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266421/third_report_on_operation_of_tafa2010_171213.pdf
- Fourth Report: September 2013-September 2014 (published March 2015):
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/412084/TAFE_2014_4th_report_.pdf

5.2 The full responses given by the Treasury to each of the Independent Reviewer's reports can be found on GOV.UK:

- response to the first report (February 2012):
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/223467/fin_sanc_response_to_independent_reviewers_first_report_080212.pdf
- response to the second report (February 2013):
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266418/fin_sanc_response_to_independent_reviewers_second_report_140213.pdf
- response to the third report (February 2014):
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278338/PU1625_TAFE_response_web.pdf
- response to the 4th report (July 2015)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445619/Response_to_the_recommendations_final.pdf

5.3 In each report the Independent Reviewer has made a number of recommendations. The government then publishes a response to the report committing to implementing, partially implementing, or rejecting the recommendations. To date there have been 4 Independent Reviewer reports which have made a total of 13 recommendations.

The First Report

5.4 The **first report** was published in December 2011 and made 9 recommendations. The Treasury's response was published in February 2012.

Recommendation One

5.5 This recommended that the Treasury should issue and present to Parliament a statement of policy regarding its approach to designation under TAFAs, to ensure that the power is used in a consistent and principled manner. In particular, it should include (1) the factors that may lead the Treasury to conclude that the statutory tests for designation are met and (2) the factors that in a case where the statutory tests are satisfied may inform the Treasury's exercise of its discretion to designate.

5.6 In response, the Treasury accepted the recommendation and published a policy statement (Annex to the Treasury's response to the first report, published in February 2012) including a list of factors relevant to designation and the relevance of proportionality to the exercise of the Treasury's discretion to designate/renew. This list continues to be used when considering new designations and the renewal of existing designations.

Recommendations two and three

5.7 Recommendations two and three are linked and so were dealt with together by the Treasury. Recommendation two suggested that the Treasury convene regular meetings to discuss designations and reviews and consider the option of designation against possible alternatives. These meetings should have input from all concerned departments and agencies. Recommendation three suggested that the police should be asked to advise specifically on the prospects for prosecution at these meetings.

5.8 The Treasury responded to these recommendations by expanding the role of the Asset Freezing Working Group (AFWG) to include an Asset Freezing Review sub-Group (AFRG) which considers proposed designations and the review of existing designations against the criteria listed in the Annex to the response to the Independent Reviewer's first report. The AFWG continues to meet regularly throughout the year. AFRG meetings continue to be convened ahead of a new designation or the expiry of each designation to consider whether the individual/entity continues to meet the test in TAFAs and should have their designation renewed, or whether it should be allowed to lapse.

Recommendation 4

5.9 This recommended that when the review process was taking place prior to the Designated Person's (DP's) release from prison, it should be more effectively co-ordinated with the Multi-Agency Public Protection Arrangements (MAPPA) process. This would allow the necessity of an asset freeze to be assessed together with other possible licence conditions.

5.10 The Treasury agreed with this recommendation and worked with the National Offender Management Service (NOMS) to integrate asset freeze reviews into the MAPPA process. The Treasury has since worked actively with one London-based MAPPA panel and has established links to others through regional police forces. NOMS/MAPPA input is invited in those cases where a DP has been convicted of terrorist offences.

Recommendation 5

5.11 This recommended that the Treasury should make a list of those designated under TAFAs available on their website. In response, the Treasury acknowledged that the consolidated list of financial sanctions targets currently available on the website did not readily identify under which

regime each target was designated. The Treasury decided that it would include this information in its quarterly reports to Parliament, which are available on GOV.UK.

Recommendation 6

5.12 This recommendation set out a clear list of information that should be included in the quarterly reports to Parliament. The Treasury responded by clarifying that some of this information was already included in the reports, but that it would review the format and content of the report so that the additional information could be included. Aside from a few modifications to the format of the quarterly report made to improve it, the format of the report has been fundamentally unchanged since 2011.

5.13 The Treasury has published quarterly reports to parliament on the operation of Tafa since quarter 4 of 2011, under Section 30 of Tafa (see para 6.28 below). These are published both in Hansard and on Gov.uk. They may be accessed from:

- until Q4 2014:
<https://www.gov.uk/government/publications/operation-of-the-uks-counter-terrorist-asset-freezing-regime-quarterly-report-to-parliament>
- from Q1 2015:
<https://www.gov.uk/government/publications/operation-of-the-uks-counter-terrorist-asset-freezing-regime-quarterly-report-to-parliament>

Recommendation 7

5.14 This recommended that individual licences should be drafted with the maximum flexibility appropriate to the case. The Treasury responded by confirming that it considers each licence request against a risk framework to ensure appropriate controls are in place to mitigate the risk of funds being diverted for terrorism, while ensuring these controls remain proportionate in each case. The Treasury issues an interim licence upon designation to provide DPs with cover until other licences can be put in place.

Recommendation 8

5.15 This recommendation encouraged dialogue between financial institutions, their regulators and the Treasury to seek to simplify the way financial institutions discharge their responsibilities, and identify ways in which this could be done without causing unnecessary frustration to the designated person.

5.16 In response to this the Treasury agreed to engage further with the financial sector to identify any ways the operation of the licensing regime could be simplified. It also acknowledged that the way in which frozen accounts were operated could cause difficulty for the designated person, but noted that such decisions, including in relation to the operation of accounts once an asset freeze was lifted, were commercial decisions for banks and should not be determined by the Treasury or the regulator. The Treasury has engaged with financial institutions and the British Bankers' Association on licensing policy reviews and continues to work closely with them.

Recommendation 9

5.17 The final recommendation in the Independent Reviewer's first report directed the Treasury to produce a list of FAQs intended as practical guidance for those subject to an asset freeze. In response, the Treasury clarified that guidance, including FAQs, was already available regarding financial sanctions. It acknowledged that there was demand for more information and agreed to provide further guidance following consultation with solicitors. The FAQs have been substantially updated twice since then.

The Second Report

5.18 The **second report** was published in December 2012 and made one recommendation. The Treasury's response was published in February 2013.

Recommendation 10

5.19 This recommendation directed the Treasury to routinely provide any formerly designated individual or group who requests one with a written statement explaining why designation has been revoked or allowed to lapse. The Treasury responded by acknowledging that the effects of an asset freeze may continue to be felt after delisting and agreed to consider all requests for such written statements.

The Third Report

5.20 The **third report** was published in December 2013 and made two recommendations. The Treasury's response was published in February 2014

Recommendation 11

5.21 This recommended that high level consideration should be given to the practical role that TAFE may realistically be expected to play in the fight against terrorism, on its own or in conjunction with other measures. The Treasury responded by confirming that senior-level interdepartmental discussions would continue to take place on the best use of HMG's terrorist asset freezing powers and the way that those powers could be used to best effect. HMT continues to liaise with law enforcement and security agencies to ensure that asset freezing is used in appropriate cases.

Recommendation 12

5.22 This recommended that mechanisms should be put in place to ensure that designation under TAFE is considered in those cases where it could be beneficial. In particular this should be considered where TPIMs and proscription are being contemplated, when suspected terrorists are arrested or charged and in cases where deportations, deprivations of citizenship or passport removal are contemplated on national security grounds.

5.23 The Treasury responded by agreeing that designations under TAFE should be considered in all cases where they may be beneficial. It also confirmed that law enforcement and security agencies advised on cases where designations may be appropriate, and that these agencies were best placed to decide on the most effective mechanisms to disrupt terrorist activity by a person or entity. The Treasury agreed to continue to work with partner agencies to raise awareness of asset freezing to aid consideration of the appropriate disruptive tools to use in each case.

Increased outreach has resulted in a greater number of designations. This outreach is ongoing and includes presentations at relevant meetings/events as well as bilateral discussions with law enforcement and security agencies.

The Fourth Report

5.24 The **fourth report** was published in March 2015 and made one recommendation. The Treasury's response was published in July 2015.

Recommendation 13

5.25 This recommended that a 'devil's advocate' approach should be adopted at AFRG meetings, whereby one member of the AFRG puts the case against designation. This would require sufficient material to be provided, including primary intelligence underlying assessments where appropriate, for the exercise to be performed in a meaningful way.

5.26 The Treasury responded by recognising the importance of the review group meetings and explained that operational partners were already challenged in the information provided before the meeting and in the meeting itself to demonstrate how each case meets the statutory test for designation. The Treasury did, however, agree that nominating a 'challenge champion' to put the case against designation could further increase the level of challenge at these meetings, and the Treasury has appointed such a champion at each review since the recommendation was accepted. With regards to the material to be provided for these meetings, the Treasury did not accept that the underlying intelligence underpinning agency assessments would assist this function in most cases, and emphasised that operational partners were best placed to make assessments of such intelligence and explain those assessments to the Treasury.

Preliminary Assessment of 6 the Act

Sections 1-10: Designated Persons

6.1 Section one defines a designated person as a person designated by the Treasury under Part one of TAFA or a person included in the list provided for by Article 2(3) of EU Regulation 2580/2001.

6.2 Section two sets out the circumstances under which the Treasury can make a final designation, namely (i) when the Treasury reasonably believes that person has been involved in terrorist activity (or is owned or controlled by, or acting on behalf or at the direction of a person who is or has been involved in terrorist activity) and (ii) the Treasury considers the designation to be necessary for protecting members of the public from terrorism. The section also sets out the definition of terrorist activity, where the definition of terrorism is that given in the Terrorism Act 2000. The final designations made (including renewals of designation) during the scrutiny period, covered 58 individuals and entities.

6.3 Section three sets out that when a final designation is made, the person designated must be informed in writing, and the designation must be publicised, unless the Treasury believes that the designated person is under 18, or considers 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 the interests of justice. In those circumstances, the Treasury must only inform those persons it considers appropriate. If the reasons for restriction cease to continue, the Treasury must give written notice of that fact to the designated person and take steps to publicise the designation generally. During the scrutiny period HM Treasury made 5 restricted designations, one for the designated person being under 18 and 4 in the interests of justice. On 30 June 2014, following a judicial review of HM Treasury's decision to publicise the designation of two individuals who were due to stand trial for terrorism offences (*AB and BB v HM Treasury* [2014] EWHC (Admin)) the Court held that the decision to publicise generally the designations without giving AB and BB, after designation but before publicising, the opportunity of making representations about the impact of publication on the fairness of their trial means that the decision to publicise was flawed. Information about the designation of one individual was initially not publicised generally under TAFA because they were under 18, but this was subsequently publicised once they became 18.

6.4 The vast majority of designations are proposed by law enforcement and security agencies. Relevant parties attend a review meeting and consider the merits of any designation or renewal. A detailed statement of case is also submitted to HM Treasury. The process for proposing designations has been revised and agreed with relevant agencies (this fell outside the scrutiny period). Additionally, some designations are proposed by third countries.

6.5 Section 4 sets out that final designations last for one year, unless renewed sooner. The designation may be renewed at any time if the statutory test is met. When a designation expires the designated person must be informed in writing and the Treasury must take reasonable steps to bring it to the attention of those persons informed of the designation. During the scrutiny period 14 designations expired.

6.6 Section 5 gives the Treasury the power to vary or revoke a final designation at any time, and sets out that where designations are varied or revoked, as with expiry, the designated person

must be informed in writing and the Treasury must take reasonable steps to bring it to the attention of those persons informed of the designation. 16 designations were revoked in the scrutiny period.

6.7 Sections 6 to 9 set out that a designation may be made on an *interim* basis. Substantially the same provisions apply to interim designations as to final designations except for the fact that interim designations have a threshold of reasonable suspicion of involvement in terrorist activity rather than reasonable belief, and last for 30 days rather than one year. Where before a period of 30 days a final designation is made, the interim designation will expire. Also, a further interim designation cannot be made unless substantially new evidence is obtained. No interim designations were made during the scrutiny period.

6.8 Section 10 sets out that where the Treasury, in accordance with section 3(4) or 7(4) of TAFE inform only certain persons of a final or interim designation, they may specify that the information contained in it is to be treated as confidential: a person who is provided with or obtains such information must not disclose it if they know or have reasonable cause to suspect it is confidential. This section further sets out when disclosure of such information would be lawful. Breaching the prohibition is an offence. HM Treasury is not aware of any breaches of this section in the scrutiny period. The Court may grant an injunction to prevent such confidential information being disclosed. No such injunctions were granted during the scrutiny period.

Sections 11-18: Prohibitions in relation to designated persons

6.9 Section 11 concerns the freezing of funds and economic resources: it prohibits a person from dealing with funds or economic resources that they know, or have reasonable cause to suspect, are owned, held or controlled by a designated person. If a person does deal with the funds or economic resources of a designated person they commit an offence (under section 18 of TAFE), unless an exception applies (as set out in section 16 of TAFE) or licence is granted (under section 17 of TAFE). Dealing with funds includes using, altering, moving, allowing access to, transferring, changing the volume, amount, location, ownership, possession, character or destination of the funds, or any other changes enabling use. Dealing with economic resources refers to the exchange or use of economic resources for funds, goods or services.

6.10 At the end of the scrutiny period, £15,000 remained frozen under TAFE. In total £151,000 was frozen under TAFE during the scrutiny period. Of this figure, £101,000 was newly frozen under TAFE, i.e., was not frozen under TAFE's predecessors, the *Terrorism (United Nations Measures) Orders*. During the scrutiny period no individuals were prosecuted for breaching asset freezes under TAFE.

6.11 Sections 12-15 prohibit a person from making funds or financial services available to a designated person (Section 12) or for their benefit (Section 13); and from making economic resources available to a designated person (Section 14) or for their benefit (Section 15).

6.12 Section 16 sets out the exceptions to the prohibitions outlined in sections 11–13 of TAFE, which include crediting interest or other earnings due on the account; payments to the account which were initiated before the account was frozen; or transfers to a frozen account. The prohibition on making funds available for the benefit of a designated person does not cover the making of a payment which is a social security benefit to a person other than a designated person. Should any of the exceptions in section 1(b) or (2) of TAFE be used, the relevant institution must inform the Treasury without delay.

6.13 In February 2016 a Memorandum of Understanding (MOU) was signed by HM Treasury, the Crown Prosecution Service and law enforcement and security agencies, which set out the

process for dealing with asset freeze breaches, ensuring that administrative action does not prejudice future prosecution. Although the MOU was only signed in 2016, it was compiled with in draft form for most of 2015 and therefore is covered by the scrutiny period. This has ensured a much more joined up approach to asset freeze breaches.

6.14 Additionally, HM Treasury is currently legislating to set up a civil monetary penalty regime to allow the imposition of fines for breaches of the TAFE prohibitions in appropriate cases. The legislation would also bring certain offences under TAFE within the scope of Deferred Prosecution Agreements and Serious Crime Prevention Orders. These changes will enable a more flexible range of responses to breaches of financial sanctions.

6.15 Section 17 sets out that the prohibitions in sections 11–15 do not apply where a licence has been issued by the Treasury. A licence must specify the acts authorised by it and can be general or relate to a group or individual, be subject to conditions, and be either indefinite or subject to an expiry date. It may be varied or revoked by the Treasury at any time. Where the Treasury grants, varies or revokes a licence they must give written notice to the person and, in the case of a general licence or one issued to a category of persons, take appropriate steps to publicise the grant, variation or revocation. A person commits an offence if they obtain a licence by knowingly or recklessly providing false information or documents, or fail to comply with the conditions of a licence. During the scrutiny period, 316 specific licences were issued under TAFE. 252 were revoked, became redundant or expired. 6 general licences were also issued, permitting a category of transactions. Of these general licences, 4 remain extant (covering: provision of insurance; temporary provisions under insurance policies; legal aid; and third party payment of legal expenses).

6.16 Section 18 sets out that a person commits an offence if they intentionally participate in activities knowing that the object or effect of them is, whether directly or indirectly, to circumvent any of the prohibitions in sections 11-15, or enable or facilitate the contravention of any such prohibitions.

Sections 19-25: Information

6.17 Section 19 sets out the obligation on a relevant institution to inform the Treasury as soon as practicable if it knows, or has reasonable cause to suspect, that a person is a designated person, or has committed an offence under any provision in Chapter 2. This applies if the information or other matter on which the knowledge or suspicion is based came to the institution in the course of it carrying on its business. Where an institution informs the Treasury under this section, it must state the information or other matter on which the knowledge or suspicion is based, and any information about the person with which the person can be identified. In addition, if a relevant institution does provide information to the Treasury, and the person is a customer of the institution, the institution must also state the nature or amount of funds or economic resources held by it for the customer at the time the institution first had the knowledge or suspicion. Failure to comply with the reporting obligations constitutes an offence. The Treasury conducts an annual frozen asset reconciliation exercise to capture any accounts which should have been reported during the previous year, as well as changes to balances. In practice, most financial institutions report frozen accounts to HM Treasury in a timely manner and are clear about how to contact HM Treasury should they have any suspicions that a customer is a designated person – this happens routinely.

6.18 Section 20 sets out the powers of the Treasury to request information from designated persons, persons acting under a licence and persons in or residing in the UK. The Treasury may specify the manner in which, and the period within which, this information is to be provided.

When a person is designated, and in practice annually thereafter, the Treasury will require a DP who requires access to funds (usually a UK-resident DP) to complete a detailed financial questionnaire. This is used to assist in managing their licensing needs.

6.19 Section 21 sets out that a request under section 20 can include a request to produce specified documents or documents of a specified description. The Treasury may take copies or extracts from these documents and request an explanation of the documents from either the person or body producing them. Where the Treasury requests a designated person or person acting under a licence to produce documents, that person must take reasonable steps to obtain the documents and keep the documents under their possession or control, apart from providing them to the Treasury. This power has been exercised during the scrutiny period, yielding the documents requested.

6.20 Section 22 sets out that a person commits an offence if they: without reasonable excuse refuse or fail within the timescale and specified manner to comply with a request for information from the Treasury; knowingly or recklessly provide false information in response to a request; with intent to evade the information provisions in Chapter three of TAFE in any way changes or destroys a document that has been requested; or otherwise intentionally obstructs the Treasury in the exercise of their powers. Where a person is convicted of an offence under this section, the Court may make an order requiring them to comply with the request within a specified timeframe.

6.21 Section 23 sets out the range of persons or bodies to which the Treasury may disclose information obtained under the powers in this Part, including any document, or copy or extract of a document. In addition to the persons and bodies listed, the Treasury may, 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. Section 23 was amended by the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* on 1 April 2013 to remove reference to the Legal Services Commission and by the *Legal Aid and Coroners' Courts Act (Northern Ireland) 2014* to remove reference to the Northern Ireland Legal Services Commission on 1 April 2015. It was also amended by the *Financial Services Act 2012* on 1 April 2013 to replace reference to the Financial Services Authority with reference to the Financial Conduct Authority and the Prudential Regulation Authority, and include the Bank of England in the list of institutions to whom information may be disclosed. HM Treasury has held a number of discussions with law enforcement partners around best practice for information sharing, clarifying the obligations on each party involved.

6.22 Section 24 sets out that the Treasury must take such steps as considered appropriate to co-operate with any investigation, in the UK or elsewhere, relating to the funds, economic resources or financial transactions of a designated person. In the scrutiny period, HM Treasury has co-operated with multiple police investigations.

6.23 Section 25 outlines some general provisions. It provides clarification that nothing done under Chapter three of Part one of TAFE is to be treated as a breach of any restriction imposed by statute or otherwise but that nothing in Chapter three of Part one of TAFE authorises a disclosure that contravenes the Data Protection Act 1998, or is prohibited by Part one of the Regulation of Investigatory Powers Act 2000. It also clarifies that no solicitor or counsel is required to produce any privileged information or document; that the Chapter is not to be read as limiting any other powers the Treasury has to disclose information; and stipulates that nothing in this Chapter is to be treated as limiting the powers of the Treasury to impose conditions in connection with the discharge of their functions under section 17. Finally, this section provides a definition of 'information' and 'privileged information' for the purposes of this section.

Sections 26-47: Supplementary Provisions (Court Proceedings and Offences)

6.24 Section 26 sets out that a designated person may appeal to the High Court (or in Scotland, Court of Session) the decision of the Treasury to make, or vary, or not to vary or revoke an interim or final designation, or a Treasury decision to renew a final designation. In the scrutiny period there have been 7 designation appeals brought, all to the High Court. Of these 6 were settled before the case was heard by the Court, whilst in one case, *MF v HMT*, the Court decided in favour of HM Treasury. At the end of the scrutiny period two appeals initiated during the scrutiny period remained ongoing: the appeal brought by Moazzem BEGG on 3 November 2014, and the appeal brought by the individual known as C, on 21 May 2015.

6.25 Section 27 applies to decisions to which section 26 does not apply and sets out that any person affected by a Treasury decision made under TAFE may apply to the Court for that decision to be set aside. The Court will apply the principles applicable on an application for judicial review. In the scrutiny period one section 27 challenge was made and that aspect of the challenge succeeded. There are no section 27 challenges outstanding from the scrutiny period.

6.26 Section 28 makes additional provision about proceedings in the High Court or the Court of Session on an appeal under section 26 or an application under section 27, or on a claim arising from any matters to which such an appeal or application relates. This section makes provision to ensure that such proceedings may allow the disclosure of intercepted communications evidence in appeal and review proceedings, and permits closed material to be used in a Court proceeding under section 26 and 27, and a special advocate to be appointed. Of the appeals under section 26, three have involved closed material and the use of a Special Advocate. In one of the CLOSED cases the Court found in favour of the appellant, the other two are ongoing. None of the section 27 challenges involved closed material.

6.27 Section 29 sets out the exercise of powers of the Lord Chancellor to make rules of court.

6.28 Section 30 sets out that the Treasury must report quarterly to Parliament on the operation of TAFE. Within the scrutiny period 21 such reports have been laid. They are also available on Gov.uk: <https://www.gov.uk/government/collections/operation-of-the-uks-counter-terrorist-asset-freezing-regime-quarterly-report-to-parliament>

6.29 Section 31 originally set out that the Treasury must appoint a person to review and report yearly on the operation of Part one of TAFE, and this report must be laid before Parliament. Section 31 was amended by the *Counter-Terrorism and Security Act 2015* in April 2015, following the amendments, the reviewer must inform HM Treasury what if any reviews under this section they intend to carry out in that year. Within the scrutiny period 4 such reviews took place. Please see the section "other reports" above for details.

6.30 Section 32 sets out the penalties for breaching the prohibitions in TAFE. Within the scrutiny period no criminal prosecutions have been initiated for offences committed under TAFE.

6.31 Section 33 sets out that offences apply extra-territorially: an offence under Part one of TAFE may be committed by a UK national or UK incorporated body even where the conduct is wholly or partly outside the UK. Subsection (3) makes clear that the application of section 33 may 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 British Overseas Territories. The Terrorist Asset Freezing etc. Act 2010 (Overseas Territories) Order 2011 extends this to "a body incorporated or constituted under the law of any British overseas territory included in an order made by Her Majesty in Council under section 33(3) of this Act as it has effect in the United Kingdom." The *Terrorist Asset Freezing etc. Act 2010 (Isle of Man) Order 2011* originally

extended this provision to entities incorporated in the Isle of Man – this Order was revoked in 2015. *The Terrorist Asset-Freezing etc. Act 2010 (Guernsey) Order 2011* amended section 33 to replace references to “United Kingdom” with references to “Bailiwick”.

6.32 Sections 34-38 cover further provisions relating to offences. Section 34 sets out the liability for TAFE offences by officers of corporate entities. Section 35 sets out that if a TAFE offence is committed outside the UK, the offender may be tried in the UK. Section 36 sets the time limit for the prosecution of offences in a magistrates’ court to be three years from the time of the offence, or within a year of the evidence of that offence coming to the attention of the prosecutor (or in Scotland, the Lord Advocate). Section 37 sets out that proceedings for an offence under Part one of TAFE, other than under section 19(5) or 22 may not be instituted except by or with the consent of the Attorney General (or in Northern Ireland, the Advocate General for Northern Ireland), and that prosecution does not prevent either bail, remand or further arrest. Section 38 sets out the procedures for offences committed by unincorporated bodies.

6.33 Sections 39-41 define “funds and economic resources”, “financial services” and “relevant institutions” respectively. The *Financial Services Act 2012* amended section 41(1)(a) of TAFE to substitute “Part 4” with the words “Part 4A”, and those amendments came into force on 1 April 2013. Section 42 sets out how certain terms should be interpreted for the purposes of Part one of TAFE.

6.34 Section 43 sets out the way in which HM Treasury must inform a person of their designation, or changes to their status as a designated person.

6.35 Section 44 sets out the application of TAFE to the Crown. Section 45 deals with consequential amendments, repeals and revocations.

6.36 Section 46 sets out transitional savings and provisions.

6.37 Section 47 sets out the power to repeal Part one of TAFE in whole or in part.

6.38 Sections 48-52 comprise part two of TAFE. They cover directions to branches of financial and credit institutions (section 48) and their subsidiaries (section 49); under CTA 2008 (sections 48 and 49); circumvention of such directions (section 50); a minor amendment to the part of CTA 2008 that covers Northern Ireland credit unions (section 51) and sets out the consequential amendments to and repeals/revocations to CTA 2008 that are required as a result of the enactment of TAFE (details contained within part two of Schedules one and two to TAFE) (section 52).

6.39 Sections 53-56 comprise Part three of TAFE. They set out the territorial extent of TAFE (section 53) and the power for extension to the Crown Dependencies and British Overseas Territories (section 54). Section 55 sets out when TAFE commences, and which provisions of TAFE need to be commenced by statutory instrument, and section 56 sets out the short title for TAFE.

HM Treasury contacts

This document can be downloaded from
www.gov.uk

If you require this information in an alternative
format or have general enquiries about
HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

Email: public.enquiries@hmtreasury.gsi.gov.uk

