



HM TREASURY

Terrorist Asset-Freezing (Temporary Provisions) Bill:

Impact Assessment

February 2010



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Summary: Intervention & Options

Department /Agency: HM Treasury	Title: TERRORIST ASSET-FREEZING (TEMPORARY PROVISIONS) BILL	
Stage: Final/Implementation	Version: 1	Date 04 February 2010
Related Publications: Terrorism (United Nations Measures) Orders 2001, 2006 and 2009; Counter-Terrorism Act 2008		

Available to view or download at:

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

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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 provides for the temporary validity of the Terrorism Orders 2001, 2006 and 2009 in order to maintain the asset freeze in place in respect of persons designated under such Orders whilst the Treasury takes steps to put in place by means of primary legislation an asset freezing regime to comply with the obligations in resolution 1373.

The Bill provides that during the period beginning on the date the Bill is passed and ending on 31 December 2010, the Terrorism Orders are deemed to have been validly made under the UN Act and that every provision of those Orders is deemed to be within the power conferred by section 1 of the UN Act. This effectively reverses, on a temporary basis, the quashing of the 2006 Order by the Supreme Court and ensures the continued validity of the 2001 Order and 2009 Order. This will ensure that the designations made under these Orders will, from the date the Bill comes into force, be effective. It will also give the Treasury the power to make new designations under the 2009 Order.

The Bill further provides that anything done or omitted by a person other than the Treasury under or in reliance on the Terrorism Orders during the period beginning on 4 February 2010 (the date the 2006 Order was quashed) and ending on the date the Bill is enacted is to be treated as valid, lawful or effectual as if those Orders had been validly made and their provisions were within the scope of the UN Act. This provision is designed to protect persons (other than the Treasury) who acted on the basis of the provisions of the Terrorism Orders between the date of the quashing of the 2006 Order and the date the Bill comes into force, ensuring that their actions during that period are not rendered unlawful by virtue of the legal status of the Terrorism Orders

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

1. Do nothing: 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 this Bill temporarily maintaining existing asset freezes, followed by a longer bill reinstating the asset freezing regime. Our preferred option.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? This is a temporary provision. HMT will keep the asset freezing regime under review and will continue to report quarterly to Parliament on use of powers.

While there is a possible cost of compliance for financial institutions, it is expected that this will already have been absorbed as relevant institutions will already have systems in place in respect of obligations arising under the 2006 Order and EC regulations imposing asset freezes on persons, as well as to meet under money laundering legislation. 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.

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

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

Signed by the responsible Minister:



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

Summary: Analysis & Evidence

Policy Option: 3	Description:
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' The Bill maintains existing asset freezes under the Terrorism Orders. The financial sector already has the necessary systems and controls in place.		
	One-off (Transition) Yrs			
	£ N/A			
	Average Annual Cost (excluding one-off)			
	£ N/A	Total Cost (PV)	£	
Other key non-monetised costs by 'main affected groups' None expected.				

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups'		
	One-off Yrs			
	£ N/A			
	Average Annual Benefit (excluding one-off)			
	£ N/A	Total Benefit (PV)	£	
Other key non-monetised benefits 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	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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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	£

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Evidence Base (for summary sheets)

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

International and Domestic Policy Context

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

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

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

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

In its judgment in the case of *HM Treasury v Ahmed and Others*, the Supreme Court ruled that the 2006 Order is beyond the scope of the power provided by section 1 of the UN Act 1946 and quashed that Order on 4 February 2010. 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 prevent the unfreezing of assets owned or controlled by persons designated under the Terrorism Orders by making provision for the temporary validity of those Orders. The Bill deems that the Terrorism Orders are validly made until 31 December 2010. The Bill also ensures that during the period in which the Act has effect the Treasury retains the power under the 2009 Order to make new domestic terrorism designations where it is necessary for national security and public protection.

The Bill also provides that actions taken under the Orders by persons (other than the Treasury) were valid and lawful, between 4 February 2010 and the date the Bill is enacted. There is a period of

retrospective validation for the period between the Supreme Court's quashing Order and the coming into force of the Bill. This is to provide third parties (such as banks which hold frozen funds) legal protection with retrospective effect if they retain funds during this period between the Order being quashed and the legislation having effect.

During the period the Act is in force, the Treasury will seek to introduce a further bill which will provide a full framework in primary legislation for the asset freezing regime.

Policy options

The Treasury has considered 2 options:

1. Do nothing

The threat to the UK from international terrorism is significant. Asset freezing is a valuable and effective counter-terrorism tool. If action is not taken, over £150,000 of frozen funds will be unfrozen and other restrictions on designated persons and third parties removed. 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. Not pursuing legislation will mean that the UK will no longer meet our 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 which temporarily validates the Terrorism Orders

Under this, our preferred option, we would seek to secure the immediate passage of a Bill temporarily validating all provisions under the Terrorism Orders. The Bill will remain in effect until 31 December 2010, before which time a full Bill will be introduced which puts the asset freezing regime into primary legislation. Persons designated under the saved Terrorism Orders will then 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 Order.

This Bill is necessary to maintain the financial restrictions against persons designated under the Terrorism Orders and prevent their funds becoming unfrozen and used for terrorist purposes. It is also required and to make new domestic terrorism designations where necessary for national security and public protection.

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 Bill temporarily validates all provisions under the Terrorism Orders, incurring minimal additional costs.

Costs and Benefits

Costs

The effect of the Bill is to preserve the provisions of the Terrorism Orders on a temporary basis. Reporting requirements placed on relevant institutions under those Orders continue in force. Relevant institutions will already have systems in place in respect of obligations arising under the 2006 Order and EC regulations imposing asset freezes on persons, as well as to meet under money laundering legislation. These systems are also required to meet other obligations arising under money laundering legislation, notably the Proceeds of Crime Act 2002. The Bill does not therefore impose any new

obligations or remove any obligations on relevant institutions so the financial effect of the Bill will be neutral.

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.

Offences and penalty provisions

During the period from the passing of the Bill to 31 December 2010, criminal offences and penalties will apply in relation to non-compliance with the requirements of the Terrorism Orders. During the period from 4 February 2010 to the date the Bill receives Royal Assent, no criminal liability will attach to breaches of obligations and prohibitions under the Terrorism Orders.

Conclusion

This Bill is required to temporarily preserve the provisions of the Terrorism Orders to prevent funds being used for terrorist purposes until a second Bill which puts the asset freezing regime into primary legislation, is passed. This Bill's passage is in the interests of national security, fulfils our international obligations and prevents our international counter-terrorism efforts from being undermined.

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 are therefore compatible with Articles 6 and 8, and Article 1 of Protocol 1 of the ECHR, as set out below:

Article 1 Protocol 1

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

Article 8

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

interest in a direction being publicised as fully as possible so that the prohibitions in the order can be given the fullest effect.

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. Interference will be made in that persons with a claim (which would constitute property for the purposes of A1P1) as a result of the quashing of the 2006 Order will not be able to go to Court to make claims for breaches which occur during the period from the quashing of the 2006 Order and the coming into force of the Bill. The Treasury, when balancing this interference against the public interest and the limited extent of the interference has concluded that it is proportionate.

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

HM Treasury contacts

This document can be found in full on our website at:

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