



Terrorist Asset-Freezing etc. Act 2010

This Notice draws attention to the coming into force of the Terrorist Asset-Freezing etc. Act 2010 ("the Act") on 17 December 2010. This Act replaces the Terrorism (United Nations Measures) Order 2009 ("the 2009 Order") and the Terrorist Asset-Freezing (Temporary Provisions) Act 2010.

Under section 46 of the Act directions made under the 2009 Order which were in force immediately before the Act came into effect continue to have effect until 16 March 2011 unless revoked earlier.

Licences and requests for information made under the 2009 Order which were in effect immediately before the Act came into force continue to have effect until revoked or withdrawn.

Therefore, there are no changes to the Consolidated List as a result of the coming into force of the Act.

This Notice provides guidance on certain aspects only of the Act and should be read alongside the Act.

The Act also amends Schedule 7 to the Counter-Terrorism Act 2008. Separate guidance on Schedule 7 and the changes to it can be found at:

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

It is the responsibility of relevant institutions (see Annex) and others to comply with the Act. Firms should ensure that they have policies and procedures in place to ensure that they comply. Firms are reminded that failure to identify and freeze the account(s) of designated persons (see below) may lead, for example, to funds being made available to or for the benefit of a designated person, which can constitute a breach of the Act.

Introduction

1. Terrorism-related asset freezes are a preventative rather than punitive tool. The key objective is to prevent and suppress the financing and facilitation of any acts of terrorism.

Legislative Framework

2. The United Nations Security Council adopted Resolution 1373 (2001) on 28 September 2001. The Resolution requires that Member States freeze the assets of those involved in terrorist acts, and prohibit funds and financial services being made available to those involved in terrorist acts.
3. Pursuant to Resolution 1373, on 27 December 2001 the European Council Common Position 2001/931/CFSP established a list of individuals and entities involved in terrorism. Council Regulation (EC) No 2580/2001 of 27 December 2001 implemented prohibitions in relation to persons on the list. The list is updated by way of Council Decisions or Commission Regulations.
4. On 17 December 2010, the Terrorist Asset-Freezing etc. Act 2010 came into force. The Act makes provision for imposing asset freezes on certain persons either designated by HM Treasury on the basis that they are suspected or believed to be, or to have been, involved in terrorist activity or who have been designated by the EU in accordance with Council Regulation (EC) No 2580/2001.
5. A copy of the Act in the form in which it came into force is available from the Financial Sanctions pages of the Treasury website at:
http://www.hm-treasury.gov.uk/d/terrorist_assetfreezing_act2010.pdf
6. The Act replaces the Terrorism (United Nations Measures) Order 2009 under which the Treasury implemented the requirements of Resolution 1373 and Regulation 2580/2001. The Act draws on the 2009 Order but makes a number of changes including to the legal test for designation, the nature of the prohibitions, the procedure for challenging designations and the requirement for relevant institutions to report information about designated persons. The Act introduces requirements to present quarterly reports to Parliament and appoint an independent reviewer to report on the operation of the asset freezing part of the Act.

Application

7. Sections 33, 53 and 54 of the Act set out the extent and extra-territorial application of the Act and its offences. In summary, the Act applies to all natural persons (that is, individuals) and legal persons (e.g. banks, building societies, money services businesses and other financial institutions, commercial companies, charitable organisations, Scottish partnerships and non-governmental organisations), either in the UK or established under UK law (e.g. overseas branches of UK incorporated entities), as well as UK nationals abroad.
8. The Act does not apply to subsidiaries of UK companies operating wholly outside the UK and which do not have legal personality under UK law.
9. The Act does not automatically apply to UK Crown Dependencies or Overseas Territories although section 54 of the Act provides that any of its provisions can be extended by way of Order in Council to those jurisdictions. Further, section 33 provides for the offences in Part 1 of the Act to be extended by Order in Council so that they can be committed by bodies incorporated under the law of any of those jurisdictions. The Act provides that the Terrorist Asset-Freezing (Temporary Provisions) Act 2010 remains in force in respect of these jurisdictions until 31 March 2011. It is anticipated that prior to this date either Orders in Council or local laws will be made to provide for terrorist asset freezing provisions in these jurisdictions.

Designated Persons

10. The core prohibitions in the Act relate to “designated persons” which, for the purposes of the Act means:
 - (i) A person designated by the Treasury for the purposes of Part 1 of the Act, or
 - (ii) 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 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism.
11. The names of designated persons for the purposes of the Act can be found on the ‘Terrorism and Terrorist Financing’ Regime page on the Treasury’s website at:
<http://www.hm-treasury.gov.uk/d/terrorism.htm>
12. The names are also included in the Consolidated List of financial sanctions targets which is maintained on the Treasury website at:
http://www.hm-treasury.gov.uk/fin_sanctions_index.htm

Definitions

13. The Act contains a number of definitions. Some of the key terms can be found at the [Annex](#) to this Notice. The definitions of funds, economic resources and financial services are not exhaustive. For example, although pre-paid cards, gift cards, travellers' cheques and bearer bonds are not listed in the definition of funds they are considered to constitute 'funds' for the purposes of the Act. Similarly there may be other financial services that are not specifically listed but would also be considered 'financial services' for the purposes of the Act.

The Prohibitions

14. There are five core prohibitions in the Act, breach of any of which is a criminal offence. In summary these are prohibitions on:

- (i) Dealing with the funds and economic resources of a designated person;
- (ii) Making funds or financial services available to a designated person;
- (iii) Making funds or financial services available for the benefit of a designated person;
- (iv) Making economic resources available to a designated person; and
- (v) Making economic resources available for the benefit of a designated person.

15. This Notice groups the prohibitions into three categories – (i) dealing with designated persons' funds and economic resources, (ii) making funds, financial services and economic resources available to designated persons and (iii) making funds, financial services and economic resources available for the benefit of designated persons.

Freezing of funds and economic resources of designated persons

16. Section 11 of the Act has the effect of freezing designated persons' funds and economic resources by prohibiting a person from dealing with funds or economic resources owned, held or controlled by designated persons. If the person in question knows, or has reasonable cause to suspect that he or she is dealing with such funds or economic resources, they commit an offence.

17. In the context of funds, "dealing" means any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management.

18. In the context of economic resources, “dealing” means exchange or use in exchange, for funds, goods or services, including, but not limited to, selling, hiring or mortgaging them.

Making funds, financial services and economic resources available to designated persons

19. Section 12 of the Act provides that no funds or financial services shall be made available, directly or indirectly, to a designated person. If the person making the funds or financial services knows, or has reasonable cause to suspect, that he or she is making the funds or financial services so available, he or she commits an offence.

20. Section 14 of the Act provides that no economic resources shall be made available, directly or indirectly, to a designated person. If the person making the economic resources available knows, or has reasonable cause to suspect, that he or she is making the economic resources so available, and that the designated person would be likely to exchange the economic resources, or use them in exchange, for funds, goods or services, the person commits an offence.

Making funds, financial services and economic resources available for benefit of designated person

21. Section 13 of the Act provides that no funds or financial services shall be made 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 he or she is making the funds or financial services available to a person where, as a result, the designated person will, or will be able to, derive a significant financial benefit, the person making the funds or financial services available commits an offence.

22. Section 15 of the Act provides that no economic resources shall be made available to any person for the benefit of a designated person. If the person making the economic resource available knows, or has reasonable cause to suspect, that he or she is making the economic resources available to a person where, and that as a result, the designated person will, or will be able to, derive a significant financial benefit, the person making the economic resources available commits an offence.

23. ‘Financial benefit’ includes the discharge of a financial obligation for which the designated person is wholly or partly responsible.

24. A significant financial benefit can vary from case to case.

Frozen accounts

25. All funds belonging to, owned or controlled by designated persons held by banks, building societies, money service businesses, stockbrokers, solicitors, accountants, etc must be frozen. No payment or transfer may be made from a frozen account, including to another frozen account, except under the authority of a licence granted by the Treasury, regardless of amount or beneficiary.
26. The deduction of fees or service charges for routine holding or maintenance of frozen accounts requires a licence.
27. Loans and other forms of credit, including overdrafts, should not be made available to designated persons unless a licence has been obtained from the Treasury. No further drawings may be made under existing loan facilities and no new arrangements should be entered into in the absence of a licence.

Interest, other payments and credits

28. Relevant institutions do not need a licence to credit frozen accounts with:
- (i) interest or other earnings due on the account, or
 - (ii) payments due under contracts, agreements or obligations that were concluded or arose prior to the date on which the person was designated by the Treasury or included in the list provided for in Council Regulation (EC) No 2580/2001.
29. The prohibition on making funds or financial services available does not prevent relevant institutions from crediting frozen accounts where they receive funds transferred to the account of a designated person.
30. A relevant institution is required to inform the Treasury without delay if it credits a frozen account in accordance with paragraph 28(ii) or 29 above.
31. When reporting in accordance with paragraph 30 above, the following information (if available to the reporting institution) should be provided:
- (a) the account number and account holder of the frozen account credited;
 - (b) the date upon which funds were credited;
 - (c) the amount of funds credited;
 - (d) details of the remitter and remitting bank; and

(e) details of any intermediary bank involved in the transaction

Licences and Licensing

32. Section 17 of the Act gives the Treasury power to license certain transactions, payments and dealings which would otherwise breach the prohibitions in sections 11 to 15 of the Act. Licences may relate to a specific person or transaction or may be more general and relate to a category of persons or activities. The Treasury may vary or revoke a licence at any time.

33. The Treasury issued a number of general licences permitting certain activities which would otherwise breach the prohibitions in the 2009 Order. These licences have effect as if made under the Act. Further information on these general licences can be obtained from the Financial Sanctions pages of the Treasury website at:

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

34. The main objective of the Treasury's licensing regime is to ensure that an asset freeze is applied in a proportionate manner, minimising the risk of funds being used for terrorism, whilst ensuring that consistent with this objective the designated person may have access to sufficient funds and economic resources to meet their needs and that third parties are not adversely affected by the freeze.

35. Any person who wishes to apply for a licence should apply in writing to the Treasury's Asset Freezing Unit. The application should clearly set out the grounds on which the licence is sought and provide full details and evidence in support.

Provision of information

36. Relevant institutions and other persons are requested to check whether they maintain any accounts or otherwise hold any funds or economic resources for, or provide financial services to, designated persons. If so, they must freeze such accounts or other funds and, unless licensed by the Treasury, refrain from dealing with or making available such funds and suspend the provision of any financial services. Relevant institutions must report their findings to the Treasury.

37. A relevant institution must also inform the Treasury as soon as practicable if it knows or has reasonable cause to suspect that a person has committed an offence under the Act, where that information came to it in the course of carrying on its business.

Challenging a designation or other decision

38. The designated person may appeal under section 26(2) of the Act against any decision by the Treasury in relation to the making, variation or revocation of that person's designation to the High Court, or in Scotland, the Court of Session. The making of an appeal does not suspend the effect of the decision to which the appeal relates.

39. A designated person or any other person affected by any other decision made by the Treasury under the Act may under section 27(2) of the Act apply to the High Court or, in Scotland, the Court of Session, for the decision to be set aside.

40. The address for service of legal correspondence for the Treasury is:

The Treasury Solicitor's Department, One Kemble Street, London, WC2B 4TS
Phone: 020 7210 3000. DX number: 123242 Kingsway.

Licence applications and enquiries

41. Non-media enquiries should be addressed by post to the Asset Freezing Unit, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ, or by phone 020 7270 5454 or by e-mail to AFU@hmtreasury.gsi.gov.uk. Applications for licences should be marked "Licensing".

42. Media enquiries should be addressed to the Treasury Press Office on 020 7270 5238.

HM Treasury
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ANNEX TO NOTICE

DEFINITIONS

“Designated person” (section 1) means-

- (a) a person designated by the Treasury for the purposes of this Part (*Part 1 of the 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.

“Deal with” (section 11(2)) means-

- (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.

“Funds” and “economic resources” (section 39) means-

- (1) “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 and other income on or value accruing from or generated by assets;
 - (e) credit, rights of set-off, guarantees, performance bonds and other financial commitments;
 - (f) letters of credit, bills of lading and bills of sale;
 - (g) documents providing evidence of an interest in funds or financial resources;
 - (h) any other instrument of export financing.
- (2) “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.

“Financial services” (section 40) means-

- (1) 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;
 - (v) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.
- (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) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
 - (x) settlement and clearing services for financial assets (including securities, derivative products and other negotiable instruments);
 - (xi) providing or transferring financial information, and financial data processing or related software (but only by suppliers of other financial services);
 - (xii) providing advisory and other auxiliary financial services in respect of any activity listed in sub-paragraphs (i) to (xi) (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 rate 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).

"Relevant institution" (section 41) means-

- (a) a person that 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 that 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 that 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 (classes of regulated activities and categories of investment).

HM Treasury
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