The Terrorist Asset-Freezing Etc. Bill 2010-11

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Section International Affairs and Defence Section

- On 27 January 2010 the UK Supreme Court judged that the Orders in Council used to implement United Nations Security Council requirements relating to the freezing of terrorist assets were invalid
- The Labour Government passed the *Terrorist Asset-Freezing (Temporary Provisions) Act 2010* to reinstate the asset-freezing regime as primary legislation but this Act expires on 31 December 2010
- A consultation paper was published on permanent legislation. It included a draft bill
- Some respondents to the consultation said that the draft Bill still did not do enough to safeguard human rights
- On 15 July the Government presented the *Terrorist Asset-Freezing Etc. Bill 2010-1,* largely based on the existing regime. It did not contain significant new safeguards compared with the draft Bill, but one requirement on financial firms was removed, having been judged too burdensome to business
- The House of Lords Second Reading will be on 27 July 2010

Contents

1 Summary

On 27 January 2010 the UK Supreme Court announced that it had upheld the appeal in the case of *HM Treasury v Ahmed and Others*, which concerned the UK's implementation of United Nations obligations to freeze the assets of terrorists by way of two Orders in Council made under section 1 of the *United Nations Act 1946*. The Orders had been made to give effect to United Nations Security Council Resolutions requiring States to freeze the assets of those suspected of supporting terrorism.

The Court quashed the *Terrorism (United Nations Measures) Order 2006* and certain provisions in the *Al-Qaida and Taliban (United Nations Measures) Order 2006* because it considered that they exceeded the powers granted by their parent Act, the *United Nations Act 1946*. At the same time, the Supreme Court made it clear in its judgment that the *Terrorism (United Nations Measures) Order* 2009, which had replaced the 2006 Order except in as much as the earlier Order continued in force for existing designations made under it, was also liable to be quashed for similar reasons.

The Labour Government responded by using the fast-track procedure to pass primary legislation with the same effect as the quashed Orders. The *Terrorist Asset-Freezing (Temporary Provisions) Act 2010* received Royal Assent on 10 February 2010. And simply asserted the validity of the *Terrorism (United Nations Measures) Order 2009* and of the other quashed provisions. The *Terrorist Asset-Freezing (Temporary Provisions) Act* expires on 31 December 2010.

On 8 March 2010, the Labour Government published a consultation paper with a view to passing permanent primary legislation. Although there were some changes in the draft Bill published with the consultation paper, intended to strengthen the safeguards against human rights abuses, some respondents did not feel that these went far enough. Some respondents in the financial sector, which would be required to participate in the asset-freezing regime, thought that some of the requirements on financial services companies were unclear and burdensome.

On 15 July 2010, the *Terrorist Asset-Freezing Etc. Bill 2010-11* was presented in the House of Lords. It contains some changes in comparison to the provisions of the *Terrorism (United Nations Measures) Order 2009,* notably placing on a statutory basis the present practice whereby the Government makes quarterly reports to Parliament, and requiring the Government to appoint an independent person to conduct a review of the legislation. The provisions of the Bill, however, are largely based on those of the 2009 Order.

The Bill would also amend schedule 7 of the *Counter-Terrorism Act 2008*, which gives the Treasury powers to impose financial restrictions on people connected with a country of concern in relation to money-laundering, terrorist financing or the development of weapons of mass destruction.

Also addressed by the Bill is the judgment of the European Court of Justice, which has ruled that the benefits paid to spouses of designated persons under Council Regulation (EC) 881/2002 should not be covered by asset freezes. In response to the judgment, the Government announced on 15 July 2010 that it would no longer treat spouses' benefits as covered by the asset-freezing regime. The Bill has a clause to make that change of policy clear.

2 The United Nations' anti-terrorist measures

2.1 Escalating terrorist attacks

There has been a series of UN Security Council Resolutions (SCRs) demanding that states should take action, including asset-freezing, against terrorism. Until the 1990s these Resolutions involved sanctions and controls on transactions between states. The 1999 attacks on the US embassies in Kenya and Tanzania increased the urgency of action to prevent such attacks, and suggested that Resolutions concerning state actions alone were not enough and that international action against individuals or specific organisations was necessary.

In response to the attacks of 11 September 2001, the Security Council passed a further set of Resolutions requiring States to take greater steps to freeze the assets of those involved in international terrorism, and specifically Osama bin Laden, the Taliban and their associates. The Security Council established a list of persons whose assets member states were obliged to freeze.[1]

2.2 Security Council Resolutions[2]

SCR 1267 (1999) on the situation in Afghanistan provided for the freezing of funds and other financial resources derived from or generated from property owned or controlled by the Taliban or by any undertaking owned or controlled by them.[3] It also provided for a centralised list of persons and entities to whom the restrictions should apply, to be decided by a committee of the Security Council, consisting of all its members.

SCR 1333 (2000) on the situation in Afghanistan took this process a step further.[4] It provided by paragraph 8(c) that all states should freeze funds and other financial assets of Osama bin Laden and individuals and entities associated with him to ensure that no funds were made available for the benefit of any person or entity associated with him, including the al-Qaeda organisation.

On 28 September 2001, as part of its response to 9/11, the Security Council broadened its approach to the problem still further. It decided that action required to be taken against everyone who committed or attempted to commit terrorist acts or facilitated their commission. It adopted SCR 1373 (2001) on threats to international peace and security caused by terrorist acts.[5] The preamble to this Resolution recognised the need for states to complement international co-operation by taking additional measures to prevent and suppress the financing and preparation of any acts of terrorism. In paragraph 1, it states that the Security Council has decided that States shall:

> "(a) Prevent and suppress the financing of terrorist acts; (b) Criminalize the wilful provision or collection … of funds by their nationals or in their territories with the intention that the funds should be used … to carry out terrorist acts; (c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled … by such persons; and of persons and

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1 For the list associated with SCR 1267, see *The Consolidated List established and maintained by the 1267 Committee with respect to Al-Qaida, Usama bin Laden, and the Taliban and other individuals, groups, undertakings and entities associated with them.*

2 Analysis in this section is based largely on the Supreme Court judgment [2010] UKSC 2, *para*s 17-22

3 *UN SCR 1267 (1999)*, *para* 4(b)

4 *UN SCR 1333 (2000)*

5 *UN SCR 1373 (2001)*

> entities acting on behalf of, or at the direction of such persons and entities…; [and] (d) Prohibit their nationals or any persons and entities within their territories from making funds, financial assets or economic resources or financial or other related services available … for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled … by such persons and of persons and entities acting on behalf of or at the direction of such persons."[6]

Unlike SCR 1267 (1999), SCR 1373 (2001) does not provide for a centralised list of persons and entities to which resolution 1373 applies. The Security Council left States to determine for themselves who such persons and entities are. A further series of Resolutions requiring action against terrorism followed.

SCR 1822 (2008) was the most recent of these Resolutions at the time of the appeal in question. Its preamble declared that terrorism in all its forms and manifestations constitutes one of the most serious threats to peace and security and stressed that terrorism could only be defeated by a sustained and comprehensive approach involving the active collaboration of all states. In paragraph 1 it required States to take all the measures previously imposed by previous Resolutions with respect to al-Qaeda, Osama bin Laden and the Taliban

> ...and other individuals, groups, undertakings and entities associated with them, as referred to in the list created pursuant to Resolutions 1267 (1999) and 1333 (2000) (the 'Consolidated List')", including,
>
> (a) Freeze without delay the funds and other financial assets or economic resources of these individuals, groups, undertakings and entities, including funds derived from property owned or controlled directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly for such persons' benefit, or by their nationals or by persons within their territory.[7]

It was followed and reaffirmed by SCR 1904 (2009), which was adopted on 17 December 2009.

3 The UK orders

A number of pieces of anti-terrorist legislation give the UK Government powers to create an asset-freezing regime. Part 2 of the *Anti-terrorism, Crime and Security Act 2001* (the 2001 Act) provides for such a regime.[8] The Supreme Court described it as non-onerous and attended by reasonable safeguards.[9] The *Counter-Terrorism Act 2008* introduced a procedure for setting aside financial restrictions decisions taken by the Treasury.

When it came to implementing the UN's asset-freezing measures, the Government did not use the powers specifically designed for the purpose by the 2001 Act. Instead, the Treasury made a series of Orders under Section 1 of the *United Nations Act 1946* (the 1946 Act), which gives a general authorisation to Ministers for the making of such Orders in Council as are 'necessary or expedient' to give effect to Security Council Resolutions.[10] Had the 2001

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6 *UN SCR 1373 (2001)*, *Para* 1
7 *UN SCR 1822 (2008), Para* 1
8 *Anti-terrorism, Crime and Security Act 2001*, Part 2
9 Judgment in [2010] UKSC 2, *para* 51
10 *United Nations Act 1946,* Section 1(1)

Act been used, the resulting system would have been less onerous and would have had a mechanism for setting designations aside.

The *Terrorism (United Nations Measures) Order 2006* was made to give effect to SCR 1373 (2001) and SCR 1452 (2002).[11] It repealed a similar previous Order dated 2001. This is the relevant Order for the purposes of the Supreme Court case, although it had been replaced by the *Terrorism (United Nations Measures) Order 2009* (SI 2009/1747), which came into force on 10 August 2009. Like the 2001 and 2006 Terrorism Orders, the 2009 Order was made under Section 1 of the 1946 Act to give effect to SCR 1373 (2001) and other SCRs. It revoked the two similar previous Orders.[12]

In response to Security Council Resolution 1452 (2002) and others instructing states to take action against al-Qaeda, the Taliban and Osama bin Laden, the Treasury made the *Al-Qaida and Taliban (United Nations Measures) Order 2006* (this revoked a similar Order from 2002).[13]

Subsequent to the hearing in this case, the Treasury revoked the designations of the appellants under the *Terrorism (United Nations Measures) Order 2006* and issued new designations under the terms of the *Terrorism (United Nations Measures) Order 2009*.

The Government undertook in 2006 to make quarterly reports to Parliament on the operation of the counter-terrorism asset freezing regime. The reports give the number of asset-freezing designations made during the period, reviews and de-listings, licenses issued (whereby listed persons are allowed to make or receive payments under controlled circumstances) and the amount of money frozen under the regime. The latest such report was given to Parliament on 6 April 2010. The Government reported that no new designations had been made and that, as of 31 March 2010, a total of 226 accounts containing just over £370,000 of suspected terrorist funds were frozen in the UK. It also reported that three cases were reviewed and all three had their designation revoked.[14]

4 Criticisms of anti-terrorist legislation

Section 122 of the *Anti-Terrorism, Crime and Security Act* 2001 provided for the appointment of a committee of at least seven Privy Counsellors to conduct a review of the Act. The *Privy Counsellor Review Committee into the Anti-Terrorism, Crime and Security Act 2001* (known as the Newton Committee, after its chairman, Lord Newton of Braintree), was appointed in April 2002 and reported in December 2003. One of the issues of concern to the Committee was that of asset-freezing provisions. The Newton Committee called for the powers for making freezing orders to be addressed again in primary legislation.[15]

During its passage through Parliament, a clause was added to the *Anti-terrorism Crime and Security Act 2001* providing for the review of certain parts of the Act. In its statutory annual review of the Act in 2004, the Joint Committee on Human Rights referred to the Newton Committee's conclusions about asset freezing orders:

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11 The *Terrorism (United Nations Measures) Order 2006* (SI 2006/2657)

12 Terrorism (United Nations Measures) Order 2001 (SI 2001/3365); Terrorism (United Nations Measures) Order 2006 (SI 2006/2657)

13 *Al-Qa'ida and Taliban (United Nations Measures) Order 2002* (SI 2002/11). Full list of the UNSCRs implemented by the Order is given in the Explanatory Note at the end of the Order

14 HC Deb 6 April 2010, c126-8WS

15 Privy Counsellor Review Committee, *Anti-terrorism Crime and Security Act 2001 review: report,* HC 100, 2003-04, paras 149

> At present, the power under the 2001 Act is not being used, because freezing orders are made under the Terrorism (United Nations Measures) Order 2001, which itself was made under powers conferred by the United Nations Act 1946, section 1. The operation of the freezing orders made under that Order and Act are questionable in human rights terms, because there is no right to appeal against the orders and (despite the Government's contrary view) we consider that judicial review provides only a very limited protection against legislative orders of this kind, except where they contravene European Community law.
>
> We therefore endorse the recommendation in the Newton Committee that "freezing orders for specific use against terrorism should be addressed again in primary legislation" and that "freezing orders for other emergency situations, and the safeguards which should accompany them, should be reconsidered on their own merits in the context of more appropriate legislation for emergencies"[16]

In 2009, the International Commission of Jurists set up a Panel on Terrorism, Counter-terrorism and Human Rights. The report of the Commission drew attention to what it saw as serious deficiencies in the listing of individuals as terrorists, both at the national and international level, particularly with regard to the right of appeal.[17]

5 The appeal

The appeal in the case of *A v Her Majesty's Treasury,* brought by individuals who had been subjected to asset freezes under the 2006 Orders, was heard in High Court in 2008,[18] the Appeal Court in October 2008[19] and, on 5 October 2009, the case was heard in the Supreme Court; the case was deliberately chosen as the Supreme Court's first because of its constitutional significance. Lord Phillips, President of the Supreme Court, said:

> It is particularly appropriate that these should be the first appeals to be heard in the Supreme Court of the United Kingdom, for they concern the separation of powers.[20]

In its deliberations over the appeal, the Supreme Court set out to decide the following:

> Both Orders
>
> 1. Are the Orders ultra vires the 1946 Act by reference to the principle of legality?
>
> 2. Are the Orders incompatible with the Convention rights under the Human Rights Act 1998?
>
> The TO [*Terrorism (United Nations Measures) Order 2006*]
>
> 3. If it is not ultra vires on one or other of the previous grounds, is the TO ultra vires the 1946 Act because its terms go beyond those required by the SCR?
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> The AQO [*Al-Qaida and Taliban (United Nations Measures) Order 2006*]

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16 Joint Committee On Human Rights, *Anti-terrorism*, *Crime and Security Act 2001: Statutory Review and Continuance of Part 4*, HC 38/HC 381 2003-04, part 4

17 International Commission of Jurists, *Assessing Damage, Urging Action,* An initiative of the International Commission of Jurists Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights, 2009

18 [2008] EWHC 869 (Admin)

19 [2008] EWCA Civ 1187

20 UK Supreme Court blog, 2 February 2010

> 4. Is the AQO ultra vires the 1946 Act because it violates the right of effective judicial review?[21]

5.1 Judgment

On 27 January 2010, the Supreme Court announced its judgment,[22] summarised as follows:

> The Supreme Court has unanimously held that the TO [*Terrorism (United Nations Measures) Order 2006*] should be quashed as ultra vires s.1(1) of the 1946 Act. It also held by a majority of six to one (Lord Brown dissenting) that Article 3(1)(b) of the AQO [*Al-Qaida and Taliban (United Nations Measures) Order* 2006] must also be quashed as ultra vires. It was noted that if the designations in respect of A, K, M and G imposed subsequent to the hearing pursuant to the TO 2009 had been before the Supreme Court these too would have been quashed.[23],[24]

One reason for the Court to be particularly vigilant over the severe restrictions imposed by the Orders was the fact that the *United Nations Act 1946* allows Orders in Council to be made without any Parliamentary scrutiny. Having studied the legislative history of the 1946 Act, the Court concluded that Parliament had not intended the 1946 Act to be used to introduce coercive measures which interfere with UK citizens' basic rights.

Giving the leading judgment, Lord Hope said that the Orders:

> ...lie wholly outside the scope of Parliamentary scrutiny. This raises fundamental questions about the relationship between Parliament and the executive and about judicial control over the power of the executive.[25]

Lord Hope went on:

> The consequences of the Orders that were made in this case are so drastic and so oppressive that we must be just as alert to see that the coercive action that the Treasury have taken really is within the powers that the [*United Nations Act 1946*] has given them. Even in the face of the threat of international terrorism, the safety of the people is not the supreme law. We must be just as careful to guard against unrestrained encroachments on personal liberty.[26]

Commenting on the necessity of implementing Security Council Resolutions, Lord Hope said:

> ...these resolutions are the product of a body of which the executive is a member as the United Kingdom's representative. Conferring an unlimited discretion on the executive as to how those resolutions, which it has a hand in making, are to be implemented seems to me to be wholly unacceptable. It conflicts with the basic rules that lie at the heart of our democracy.[27]

The judgment also pointed out that other states did not find it necessary to give unlimited powers to the executive in order to give effect to Security Council Resolutions:

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21 Judgment in [2010] UKSC 2, para 41

22 *Her Majesty's Treasury (Respondent) v Mohammed Jabar Ahmed and others (FC) (Appellants) Her Majesty's Treasury (Respondent) v Mohammed al-Ghabra (FC) (Appellant) R (on the application of Hani El Sayed Sabaei Youssef) (Respondent) v Her Majesty's Treasury (Appellant),* [2010] UKSC 2, 27 January 2010

23 Supreme Court, Press summary, 27 January 2010.

24 Ultra Vires is a Latin term which essentially means "beyond the powers". The Oxford Dictionary of Law indicates that it is usually used to describe an act by a public authority, company, or other body "that goes beyond the limits of powers conferred on it".

25 Judgment in [2010] UKSC 2, *para* 5

26 *Ibid.*, *para* 6

27 *Ibid.*, *para* 45

> The regimes that both Australia and New Zealand have introduced by means of primary legislation are exacting. But they contain various, albeit limited, safeguards and in so far as they interfere with basic rights of the individual that interference has been expressly authorised by their respective legislatures.[28]

Both Australia and New Zealand initially implemented asset-freezing regimes under their respective United Nations Acts, but later replaced these regimes with ones based on primary legislation.[29]

The Terrorism (United Nations Measures) Order 2006

The relevant Security Council Resolutions did not address the question of the level of proof required for imposing asset freezes. The judgment concludes that in the use of a 'reasonable suspicion' test to identify those whose assets are to be frozen, the Treasury had exceeded the powers granted to it by the *United Nations Act 1946,* and that the measures were therefore unlawful. It explained:

> The absence of any indication that Parliament had the imposition of restrictions on the freedom of individuals in mind when the provisions of the 1946 Act were being debated makes it impossible to say that it squarely confronted those effects and was willing to accept the political cost when that measure was enacted.[30]

The Supreme Court came to a unanimous verdict on the first Order.

Al-Qaida and Taliban (United Nations Measures) Order 2006

The judgment on the other Order in question, the *Al-Qaida and Taliban (United Nations Measures) Order 2006,* was different, and one of the Justices, Lord Brown, gave a dissenting opinion. The Court did not consider that this second Order, which did not use a 'reasonable suspicion' test, went beyond the provisions of the relevant Security Council Resolutions. The majority opinion, however, was that the *Al-Qaida and Taliban (United Nations Measures) Order 2006* left designated individuals with no judicial remedy. Lord Hope said: 'There is nothing in the listing or de-listing procedure that recognises the principles of natural justice or that provides for basic procedural fairness'.[31] This meant that the relevant provisions (Article 3(1)(b)) in the Order were not lawful and had to be quashed.

The dissenting opinion of Lord Brown was that the relevant Security Council Resolutions were unambiguous about the requirements for action against al-Qaeda and the 1946 Act gave unambiguous powers to give effect to such Resolutions. His concluding remark was:

> I content myself with the hope that the view of the majority will not be thought to indicate any weakening in this country's commitment to the UN Charter.[32]

In his concluding remark on both appeals, Lord Phillips said:

> Nobody should conclude that the result of these appeals constitutes judicial interference with the will of Parliament. On the contrary it upholds the supremacy of

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28 *Ibid*., para 50

29 Further information about Australia's system can be found at the Australian Government web page Australia's Implementation of United Nations Security Council Financial Sanctions

30 *Ibid*., para 61

31 *Ibid*., para 80

32 *Ibid*., *para* 206

> Parliament in deciding whether or not measures should be imposed that affect the fundamental rights of those in this country.[33]

6 The Government's response

On 27 January 2010, the then Government issued a Written Statement announcing its intention to introduce primary legislation to re-instate the asset-freezing regime. The Treasury Minister at the time, Sarah McCarthy-Fry, said:

> The UK has implemented these obligations through Orders in Council made under Section 1 of the United Nations Act 1946. Section 1 of the UN Act 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".[34]

She went on:

> The Government made the Orders in Council in good faith based on their belief that section 1 of the United Nations Act was an appropriate legal vehicle and that it provided the most effective and timely way of implementing UN terrorist asset freezing obligations.
>
> The Government are committed to maintaining an effective, proportionate and fair terrorist asset-freezing regime that meets our United Nations obligations, protects national security by disrupting flows of terrorist finance, and safeguards human rights.
>
> In the light of the court's decision and the ongoing significant threat from international terrorism, the Government intend to bring forward fast-track primary legislation to restore the UK's terrorist asset-freezing regime.[35]

On 3 February, another Written Statement was issued, with which the Government announced its intention to replace the legislation quashed by the Supreme Court. Sarah McCarthy-Fry said:

> It is our intention to introduce legislation that effectively reinstates the Terrorism (United Nations Measures) Order 2009, which the Government has in the past used in good faith.

She went on:

> Our ambition is to mirror the 2009 Order in the legislation we present to the House.

Despite the fact that the restrictive measures imposed by the regime had been described in the Supreme Court judgment as 'contrary to fundamental principles of human rights',[36] the temporary provisions Bill did not alter the substance of these measures.

Suspension

The Government had asked for the effect of the Supreme Court's decision to be suspended, to allow for replacement legislation to be passed. Having considered a partial suspension, the Court announced on 4 February that it would not grant this delay:

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33 *Ibid*., para 157
34 HC Deb 27 February 2009, c54WS
35 HC Deb 27 February 2009, c54WS
36 Judgment in [2010] UKSC 2, para 203

> The ends sought by Mr Swift might well be thought desirable, but I do not consider that they justify the means that he proposes. This court should not lend itself to a procedure that is designed to obfuscate the effect of its judgment. Accordingly, I would not suspend the operation of any part of the court's order.[37]

Retrospective provision

The Government therefore decided to include a retrospective provision in the Bill. Sarah McCarthy-Fry said:

> This legislation includes a provision backdated to today's judgment, providing legal authority to banks and those covered by the existing orders to ensure asset freezes can be maintained without a gap.[38]

The Treasury would contact banks to inform them of the legal situation. In a notice to banks, the Treasury said:

> This legislation will ensure a continued freeze on the assets of those persons designated under these Orders. Once enacted, it will also have the effect of validating retrospectively any actions taken by persons (other than the Treasury) under or in reliance on those Orders. Financial institutions and others will be protected from challenges if they maintain asset freezes in accordance with the Orders in the interim period until this Act comes into force. It is intended that the Bill will pass through all its Parliamentary stages early next week. We expect financial institutions to maintain all asset freezes under the 2001, 2006 and 2009 Terrorism Orders.[39]

The *Terrorist Asset-Freezing (Temporary Provisions) Bill 2009-10* was only an interim measure, intended to maintain the existing asset-freezing regime until a longer-term legislative solution was found. The provisions of the Bill would last until 31 December 2010, in line with the recommendations of the House of Lords Constitution Committee on fast-track legislation. This was the second bill to be fast-tracked since the House of Lords Constitution Committee report on fast-tracking legislation was published.[40] It was presented to Parliament on 5 February and received its Royal Assent on 10 February 2010.

Section 1 of the temporary provisions Act simply temporarily re-instated the validity of the Orders that had been quashed by the Supreme Court and asserted the validity of the 2009 Order, which had not been quashed by the Court but which the judgment of the Court had identified as vulnerable to the same fate.

Section 2 of the Act contained a retrospective provision to maintain the validity of the asset-freezing regime during the period between the Supreme Court's refusal, on 4 February, of the Government's request for a suspension of judgment and the coming into force of the Act, on 10 February 2010.

As well as implementing the Security Council Resolutions mentioned above, the *Al-Qaida and Taliban (United Nations Measures) Order 2006* also provided for the implementation of the European asset-freezing requirements under Regulation (EC) 881/2002 of 27th May 2002,[41] as amended by a series of subsequent Council Regulations. The *Al-Qaida and*

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37 Judgment in [2010] UKSC 5, 4 February 2010, para 8

38 HC Deb 4 February 2010, c21WS

39 See HM Treasury, *Financial Sanctions Notice*, 4 February 2010

40 Select Committee on the Constitution, *Fast-track Legislation: Constitutional Implications and Safeguards*, 7 July 2009, HL 116-I 2008-09

41 Regulation (EC) 881/2002 of 27th May 2002 (OJL 139, 29.5.2002, p.9)

Taliban (United Nations Measures) Order 2006 was not quashed in its entirety, and the Government decided to replace its enforcement provisions with regulations.

The Al-*Qaeda and Taliban (Asset-Freezing) Regulations 2010* were laid on 25 February 2010 and debated in the House of Lords on 25 March,[42] in the House of Commons on 30 March;[43] they came into force on 31 March.

7 The consultation on permanent legislation

Having achieved the temporary reinstatement of the asset-freezing regime that existed under the 2006 and 2009 Orders before the Supreme Court's judgment, the then Government announced in a Written Statement that it had published a consultation paper on the introduction of a permanent solution that would establish the asset-freezing regime in primary legislation.[44] The consultation paper included a draft of the Bill,[45] and the closing date for responses to the consultation was 18 June 2010.

7.1 Responses to the consultation on permanent legislation

The Government published a summary of the consultation responses on 15 July 2010.[46] 16 responses had been received including from financial services companies, law firms and voluntary organisations.

A number of institutions were concerned that the requirement for financial services companies to check whether they have had business dealings with designated persons in the five years previous to the date of a designation placed an undue burden on those companies. The Government accepted the validity of this concern and removed the requirement from the Bill.

The Government responded to worries that the system would be difficult for financial institutions to operate by undertaking to work harder with trade and supervisory bodies to get guidance to financial institutions, and to make the clarity of licences clearer. There was also an undertaking to make sure that Treasury officials understand problems associated with the operation of the asset-freezing regime.

On civil liberties, the majority of respondents thought that the proposed legislation did not have strong enough safeguards for civil liberties. The legal test of 'reasonable suspicion' was criticised by some as being too lax. The Government stood by this test, explaining that the asset-freezing regime should be preventive in nature, and the ability to act on reasonable suspicion is consistent with preventive action. The Government also rejected criticism of the change from the 2009 Order whereby, instead of designations being applied to persons who, it is suspected, "are" involved in terrorist activity, designations would now be applied to those who "are or have been" involved in terrorist activity. The Government's position is that this is not intended to include more people in the scope of the legislation, simply to reflect current practice whereby recent past activity is taken into account when deciding whether there is a "reasonable suspicion" of terrorist involvement.

Some respondents thought that the courts should have an earlier involvement in the asset-freezing regime, that the secret use of intercept material undermined the justice of the

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42 Lords Grand Committee, 25 March 2010, c452-62
43 5th Delegated Legislation Committee, 30 March 2010, c3-12
44 HC Deb 8 March 2010, c1-3WS
45 HM Treasury, *Public Consultation on the draft Terrorist Asset-Freezing Bill,* 18 March 2010
46 HM Treasury, *Draft terrorist asset-freezing bill: summary of responses,* Cm 7888, June 2010

process, that the special advocates system would not provide sufficient safeguard and that the asset-freezing provisions in various pieces of legislation should be consolidated, rather than introducing a new act. The Government's response was that, even though the asset-freezing powers were not specifically part of the general review of terrorism legislation, those aspects of anti-terrorist laws, and the 'reasonable suspicion' test, would be looked at in the general review. Some respondents thought that the asset-freezing powers in other legislation were sufficient. The Government's response was that it had studied the powers in other Acts and that they would not be sufficient to cover the UK's responsibilities under the UN Security Council Resolutions.

Certain wording in the draft Bill caused concern among respondents for being insufficiently clear. The phrases "significant financial benefit", "economic resources", "basic expense", and the requirement to report transactions "without delay" were criticised. The Government declined to amend any of this wording but said that the Treasury would take a reasonable and flexible approach to enforcement.

The extra-territorial elements of the Bill caused some concern. The Government responded that the UK has a duty to prevent UK nationals, wherever they might be, from making funds available for terrorism, so the extra-territorial provisions were necessary. It undertook, however, to try to clarify the provision in the explanatory notes to the Bill.

There follows a more detailed analysis of the responses of JUSTICE and the Association of Private Client Investment Managers and Stockbrokers, which published their responses seperately.

JUSTICE

JUSTICE, the human rights and law reform organisation, responded to the consultation in June 2010. In its response, the organisation criticises the draft bill for failing to bring the terrorist asset-freezing regime under one piece of legislation, leaving UNSCR 1267 to be implemented by the draft *Al Qaida and Taliban (Asset Freezing) Regulations 2010*, created under section 2(2) of the *European Communities Act 1972*. JUSTICE quotes comments by Lord Mance in the House of Lords judgment in Ahmed and others:

> One can certainly feel concern about the development and continuation over the years of a patchwork of over-lapping anti-terrorism measures, some receiving Parliamentary scrutiny, others simply the result of executive action ....
>
> It may well be thought desirable that such measures should be debated in Parliament alongside the primary legislation which Parliament did enact, and correspondingly undesirable that there should be developed and continued, as a result of executive Orders, a patchwork of measures that have and have not been debated in Parliament.[47]

JUSTICE's submission went on to point to the variety of terrorist financing provisions in the Part 3 of the Terrorism Act 2000, the asset-freezing powers of Parts 1 and 2 of the Anti-Terrorism Crime and Security Act 2001 and the financial restriction provisions of Parts 5 and 6 of the Counter-Terrorism Act 2008, and called for a general review of anti-terrorist legislation rather than continuing to add to the current 'patchwork' by passing the present Bill.

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[47] *Her Majesty's Treasury (Respondent) v Mohammed Jabar Ahmed and others (FC) (Appellants) Her Majesty's Treasury (Respondent) v Mohammed al-Ghabra (FC) (Appellant) R (on the application of Hani El Sayed Sabaei Youssef) (Respondent) v Her Majesty's Treasury (Appellant),* [2010] UKSC 2, 27 January 2010, Paras 220 and 223

Thirdly, JUSTICE pointed to the Supreme Court's judgment, which criticised the 'reasonable suspicion' legal test used in the Orders which it quashed. The Supreme Court found that a reasonable suspicion test went beyond the requirements of the Security Council Resolution; Lord Hope held that:

> SCR 1373(2001) is not phrased in terms of reasonable suspicion. It refers instead to persons 'who commit, or attempt to commit, terrorist acts'. The preamble refers to 'acts of terrorism'. The standard of proof is not addressed. The question how persons falling within the ambit of the decision are to be identified is left to the member states. Transposition of the direction into domestic law under section 1 of the 1946 Act raises questions of judgment as to what is 'necessary' on the one hand and what is 'expedient' on the other. It was not necessary to introduce the reasonable suspicion test in order to reproduce what the SCR requires. It may well have been expedient to do so, to ease the process of identifying those who should be restricted in their access to funds or economic resources. But widening the scope of the Order in this way was not just a drafting exercise. It was bound to have a very real impact on the people that were exposed to the restrictions as a result of it.[48]

JUSTICE criticised the Government's consultation paper for quoting the Financial Action Task Force guidelines for supporting the contention that a 'reasonable suspicion' test is appropriate, when the Supreme Court had "made clear that a 'reasonable suspicion' test is not required in order to implement UNSCR 1373."[49]

By largely following the provisions in the 2009 Order, the Bill, according to JUSTICE, remains vulnerable to challenge on the grounds that it breaches provisions of the European Convention on Human Rights (see below for the main differences between the Bill and the 2009 Order). The organisation said:

> In the circumstances, we believe the judgment of the Supreme Court in Ahmed raises serious doubts about the compatibility with fundamental rights of any primary legislation modelled upon the Terrorism Order. Specifically, the power of the Treasury to designate a person as liable to have their assets frozen for extensive periods of time on the basis of reasonable suspicion alone is likely to be held to breach the right to respect for family and private life under article 8 and the right to property under article 1 of Protocol 1 ECHR.[50]

JUSTICE submitted that the safeguards provided for in the Bill, such as the use of special advocates to represent the interests of designated persons, the right to apply for a designation to be overturned and the legislation review procedures, would not be strong enough to avoid the legislation being found incompatible with the provisions of the ECHR. In particular:

- the use of a 'reasonable suspicion' test meant that the possibility of mistaken designation remained too high

- the use of special advocates and the way in which intercept material would be used in closed hearings would be "inherently incapable of delivering a fair hearing"[51]

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48 Ibid, para 58

49 JUSTICE, *Draft Terrorist Asset-Freezing Bill: JUSTICE response to HM Treasury Consultation Cm 7852*, June 2010, p5

50 JUSTICE, *Draft Terrorist Asset-Freezing Bill: JUSTICE response to HM Treasury Consultation Cm 7852*, June 2010, p6

51 Ibid, p9

- the provisions for quarterly reporting to Parliament and independent review of the operation of the legislation, while welcome, would not provide much of a check on the disproportionate use of counter-terrorism powers[52]

Lastly, JUSTICE makes an appeal for the general protection of human rights as an important tool in the drive to control terrorism.

Association of Private Client Investment Managers and Stockbrokers (APCIMS)
The Association of Private Client Investment Managers and Stockbrokers published its response to the consultation paper on 16 July 2010.[53] While supporting the measures laid out in the draft Bill, APCIMS expressed the view that the measures used to implement the asset-freezing regime should be proportionate and compatible with the human rights of the individuals concerned.

The Association suggested that guidance should be provided to firms to enable them to implement the measures and predicted that firms would need help from the Treasury to identify designated persons. The response specified the provisions described in paragraph 5.3 of the consultation paper as requiring further guidance. These provisions would place a duty on financial institutions to report to the Treasury if they know or suspect that any customer from the last five years is a designated person or has committed an offence under the legislation, and to notify of any funds credited to frozen accounts.

The Association called for the Treasury to adopt a 'flexible, risk-based approach' to implementation and to allow firms to implement the legislation in a way that is consistent with their business models. It also called for clarity when firms are required to freeze or seize their clients' assets, particularly when there has been no conviction of the client, and for time limits to be adhered to.

8 The Bill

On 15 July 2010, the Financial Secretary to the Treasury, Mark Hoban, announced the presentation of the *Terrorist Asset-Freezing Etc Bill 2010-11* in the House of Lords,[54] along with the publication of a summary of responses to the consultation. The Second Reading of the Bill in the Lords is due to take place on 27 July.

8.1 Differences between the Bill and the 2009 Order

The Bill is largely based on the provisions of the *Terrorism (United Nations Measures) Order 2009*, although the wording is slightly different in many clauses. The most important differences between the 2009 order and the Bill are as follows:

Clause 2(1). The **legal test for deciding whether a person should be designated** has been changed. In the 2009 Order it was given as: reasonable suspicion that a person is "a person who commits" terrorist activities. In the Bill, the test is reasonable suspicion that a person "is or has been" involved in terrorist activities. According to the Government, the change of wording is not intended to broaden the scope and allow more persons to be designated. It is intended to provide greater clarity that past terrorist activity is relevant in determining whether someone should be designated.

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52 Ibid, p9
53 APCIMS, Re: Public consultation: draft terrorist asset-freezing bill, response, 16 June 2010
54 HC Deb 15 July 2010, c36-7WS

Clause 2(1). The Terrorism Order 2009 not only applies prohibitions to designated persons, it also allows the Treasury to place restrictions on **those acting on their behalf** or at their direction. The draft Bill takes a different approach. It would apply the prohibitions to designated persons only but, under the Bill, the Treasury would take the power to designate those acting on a designated person's behalf or at their direction. This change is intended to provide greater clarity about the scope of the prohibitions.

Clause 7(1) and (4). The **prohibitions against a third party handling a designated person's funds** and making funds available to a designated person have been changed. The Terrorism Order 2009 has absolute prohibitions, and it is up to the third party to show they did not know that funds would go to the designated person. The prohibitions would now be worded so that they would only apply if the person knew, or had reason to suspect, that the funds belonged to or would go to the designated person. This approach is clearer and to emphasise that the prohibitions are not intended to incriminate genuinely innocent third parties.

Clause 10. Similarly, the **prohibition on making economic resources available to a designated person** would also be changed. Economic resources can broadly be defined as convertible assets- assets which can be used to obtain funds, goods or services. The prohibition in the Terrorism Order 2009 is absolute but allows a defence where a person did not know or had no reason to suspect that the designated person would use them to generate funds, goods or services. In the Bill, this would only apply where the person providing the resource knows or has reason to suspect that the designated person will use the resource to obtain funds, goods or services.

Clause 12 (3). An additional clause has been inserted which would make clear that **benefits payable to the spouses** of designated persons are not within the scope of asset freezes (see below).

Clause 25. The Bill would put onto a statutory basis the current practice whereby the Treasury presents **quarterly reports to Parliament** (clause 24) and it would require the Treasury to appoint a person to conduct an **independent review** after the first nine months of the operation of the legislation and every year thereafter.

Clause 27. The Bill would confer the power to extend the provisions to cover **overseas territories**. This part of the Bill would confer powers to make delegated legislation. The power would enable the Government to provide that bodies incorporated in the Channel Islands, the Isle of Man or any British Overseas Territory may be criminally liable for conduct carried on outside the UK. This power would be exercised by Order in Council, with no Parliamentary procedure. Clause 48(1) would confer the power to direct that the provisions of the entire Bill extend to the Channel Islands, the Isle of Man and any other British Overseas Territory. This would make it possible for the authorities in overseas jurisdictions to adopt the provisions of the Bill without having to legislate in their own jurisdictions. This power, too, would be exercised by Order in Council with no Parliamentary procedure.[55]

The requirement for financial institutions to check whether they have had business dealings with designated persons in the **five years previous to the date of a designation** would be

[55] There are a number of other clauses in the Bill which would confer powers to make delegated legislation: Clause 36(3) on disclosure of information; clause 41(2) on repeal; and clause 49(3) on Northern Ireland Credit Unions. All of these powers would be exercised by Statutory Instrument with no Parliamentary procedure

removed, after the consultation process persuaded the Government that it was an undue burden on industry.

See the Government's list of the differences between the Bill and the present regime in the appendix to this note.

8.2 Amendment of the *Counter-Terrorism Act 2008*

Part 2 of the Bill would amend Schedule 7 of the *Counter-Terrorism Act 2008*, which gives the Treasury powers by directions to impose financial restrictions on people connected with a country of concern in relation to money-laundering, terrorist financing or the development of weapons of mass destruction. The Bill would amend these powers:

- to clarify the persons to whom a direction may be given
- to broaden the definition of persons in relation to whom restrictions can be applied
- to introduce a probation on circumventing the requirements of a direction
- to remove some enforcement functions of the Department of Enterprise, Trade and Investment in Northern Ireland

8.3 The treatment of spouses and their benefit payments

The licensing regime for allowing designated persons to receive funds to cover their basic needs has been controversial and subject to litigation. Council Regulation (EC) 881/2002 prohibits making funds available directly or indirectly for the benefit of the designated person without a licence from a competent authority.[56] The Treasury used to take this to include the payment of state benefits to the spouses or partners of designated persons where they lived together, and therefore licensed the payment of benefits to designated persons' partner's bank accounts, but required the partner to report to the Treasury on how the funds were spent.

This interpretation of the Regulation was challenged by a number of spouses living with designated persons. The House of Lords Appellate Committee considered the case and gave the opinion that the Treasury's regime was unnecessarily oppressive. Among the reasons given for this opinion was that:

> ...this intrusive regime is not required by article 2.2 of the Regulation. First, it is not required to give effect to the purpose of the Security Council Resolution, which was obviously to prevent funds from being used for terrorist activities. Indeed, the licence tells Mrs M that the licence conditions are "to provide safeguards against the risk of these funds being diverted to terrorism." It is however hard to see how the expenditure of money on domestic expenses, such as buying household food, from which Mr M derives a benefit in kind, can create any risk that he may divert funds to terrorism.[57]

This being the case, the House of Lords decided to stay proceedings and referred the case to the European Court of Justice (ECJ) for a judgment.

The Advocate General gave an opinion on 14 January 2010 to the effect that the provision should not be interpreted to include state benefits. This opinion, while not binding on the ECJ

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56 Council Regulation (EC) No 881/2002 of 27 May 2002,

57 House of Lords Appellate Committee, *R (on the application of M) (FC)(Appellant) v Her Majesty's Treasury (Respondents) and two other actions*, Report, 30 April 2008

or on the Government, led the Government to announce that it would no longer require spouses to report on how the benefits were spent.[58]

On 29 April, the ECJ confirmed the opinion of the House of Lords Appellate Committee and of the Advocate General.[59] The ECJ ruled that Article 2(2) of Council Regulation (EC) No 881/2002:

> ...must be construed as not applying to the provision by the State of social security or social assistance benefits to the spouse of a person designated by the committee created pursuant to Paragraph 6 of Resolution 1267 (1999) of the Security Council of the United Nations and included in the list in Annex I to that regulation, as amended, on the grounds only that the spouse lives with that person and will or may use some of those payments to pay for goods and services which the designated person also will consume or from which he also will benefit.[60]

On 15 July, in the statement in which the Government announced the presentation of the *Terrorist Asset-Freezing Etc Bill* to the House of Lords, Financial Secretary to the Treasury Mark Hoban also announced that the Government would from that day remove the restrictions imposed by the previous Government on the payment of state benefits to the spouses of people who are subject to an asset freeze. The statement went on:

> This Government does not believe that the asset freezing regime should affect state benefits paid to the spouses or partners of designated persons. It does not believe that such restrictions are necessary to prevent terrorist finance and it is concerned at the impact they may have on other family members and on family life.[61]

The change is embedded in the Bill, where clause 12 subsection (3) makes it clear that spouses' benefits are not affected by asset-freezing provisions.

9 Calls for a general review of anti-terrorist legislation

Much of the UK's anti-terrorism legislation is controversial and there have been a number of appeals against it. The Joint Committee on Human Rights, in its report on counter-terrorism policy and human rights of March 2010, called for a review of the necessity and proportionality of all items of anti-terrorist legislation:

> In our view, the question is not whether counter-terrorism legislation is needed at all, but whether the counter-terrorism legislation that we have got is justified and proportionate in the light of the most up to date information about the nature and scale of the threat we face from terrorism. What is needed is not consolidation, but a thoroughgoing, evidence-based review of the necessity for, and proportionality of, all the counter-terrorism legislation passed since 11 September 2001. That review should be carried out in the light of evidence of how it has worked in practice and the reasons why it is said to remain necessary and proportionate in the circumstances in which we find ourselves today.[62]

Crispin Blunt MP, the then Shadow Minister for Home Affairs and Counter-Terrorism said during a debate on the renewal of the control orders provisions in the Terrorism Act 2005:

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58 HC Deb 5 February 2010, c31-4WS

59 European Court of Justice, *M and Others v Her Majesty's Treasury*, Case C340/08, Judgment of the Court (Fourth Chamber) 29 April 2010

60 Ibid.

61 HC Deb 15 July 2010, c36-7WS

62 Joint Committee on Human Rights, Counter–Terrorism Policy and Human Rights (Seventeenth Report): Bringing Human Rights Back In, HL 86;HC 111, 2009-10, paragraph 120

> If a Conservative Government were to be elected, we would instigate a full review of the control order regime within a proper consolidation of this Government's counter-terrorist legislation. Following its consolidation in 2000, that legislation has received a decade's worth of incremental additions, so rationalisation is overdue.[63]

The Coalition Government's programme for government included an undertaking to "introduce safeguards against the misuse of anti-terrorism legislation."[64]

Liberty, the civil liberties defence organisation, also called for a review:

> To truly provide for safeguards against the misuse of anti-terror legislation we urge the new Government to consider and review the following:

- a raft of 'lower order' terror offences that are vague and broad and open to misuse;
- extended pre-charge detention;
- the ban on the use of intercept evidence in criminal proceedings;
- recent legislation rushed through Parliament in relation to Terror Asset Freezing orders;
- Schedules 7 & 8 of the Terrorism Act 2000 which allows for detention of foreign nationals without suspicion.[65]

On 13 July 2010 the review of terrorist legislation was confirmed by the Home Secretary Theresa May. Ms May said that the review would look at:

- use of control orders
- stop and search powers in section 44 of the Terrorism Act 2000 and use of terrorism legislation in relation to photography
- detention of terrorist suspects before charge
- extending the use of deportations with assurances to remove foreign nationals from the UK who pose a threat to national security
- measures to deal with organisations that promote hatred or violence
- use of the Regulation of Investigatory Powers Act 2000 by local authorities, and access to communications data in general[66]

The review will not, therefore, specifically cover the asset-freezing powers either in the current Bill or in other pieces of anti-terrorist legislation. However, other general questions relevant to the Bill, such as the 'reasonable suspicion' threshold, the use of special advocates and the secret use of confidential evidence will be reviewed. In its consultation response summary document (see below) the Government undertook to present amendments to the asset-freezing regime if the review recommends stronger safeguards for civil liberties.

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63 HC Deb 1 March 2010, c730
64 The Coalition: Our programme for Government; civil liberties [accessed 2 July 2010]
65 Liberty, *Liberty's analysis of the coalition programme for government,* 20 May 2010
66 'Rapid review of counter-terrorism powers', Home Office News Release, 13 July 2010

The review will be overseen by Lord Macdonald QC, who was made a Liberal Democrat life peer in May 2010.

Summary of key changes between the Terrorism Order 2009 and the Terrorist Asset-Freezing etc Bill (provided by HM Treasury)

Issue:	**Terrorism Order 2009**	**Bill:**	**Rationale:**
Legal Test	Freezes can be made where Treasury have reasonable grounds for suspecting that the person (i) commits, attempts to commit, participates in or facilitates the commission of acts of terrorism, (ii) is owned or controlled by a designated person or (iii) acts on behalf of or at the direction of a designated person. [Article 4]	Freezes can be made where Treasury have reasonable grounds for suspecting that the person: (i) is or has been involved in terrorist activity; (ii) is owned or controlled by such a person; or (iii) that the person is acting on behalf of or at the direction of a such a person. Freezes must be necessary for public protection. [Clause 2]	The Bill introduces language that more closely follows the test in other counter-terrorism legislation. It moves away from the question of whether the person's characteristic is to commit - to a test of whether the person is or has been involved in - terrorist activity. But it doesn't materially change the test in the 2009 Order. Bill retains the 2009 Order requirement that freezes can only be implemented where they are necessary for public protection.
Persons acting for or on behalf of designated persons	Prohibitions apply to "restricted persons" – i.e. a designated person or someone owned or controlled, directly or indirectly, by a them or acting on behalf of or at the direction of a designated person. [Articles 2(1) and 10-14]	Prohibitions only apply to designated persons. [Clauses 7-11]	Provides greater certainty as to extent of provisions, ensuring that only those designated by the Treasury are subject to the restrictions. Avoids uncertainty for third parties as to whether someone is acting on behalf of designated person.
Extent of prohibitions	Prohibitions apply in all circumstances but defence that a person did not know or have reasonable cause to suspect that the person whose funds/economic resources they are dealing with or, providing funds economic resources to is designated. [Articels 10-14]	Prohibitions only apply where someone knows, or has reason to suspect, that the person whose funds/economic resources they are dealing with or to whom they are providing funds/economic resources is designated [Clauses 7-11]	Makes prohibitions more proportionate and shifts the burden of proof for demonstrating knowing violation of the prohibitions to the prosecution.
Crown Dependencies (CDs)	Does not apply to OTs and CDs which have separate Orders in	Provisions can be extended to the CDs and OTs). [Clause 27]	CDs and OTs implement UNSCR 1373 by Order in Council made under the

and Overseas Territories (OTs)	Council under the United Nations Act 1946.		1946 Act. These are vulnerable to legal challenge. This provision ensures that the UK meets fully its international obligations by primary legislation.
State benefit payments to spouses or partners in the same household	No specific provision in the legislation. State benefit payments to spouses/partners in the same household were considered to be "for the benefit of" a designated person and therefore caught by the prohibitions.	State benefits paid to spouses are not caught by the prohibitions, even when they are made in respect of designated persons. They do not therefore need to be paid under licence. [Clause 12]	It is important that the asset freezing regime is fair and proportionate. Restrictions on benefit payments to spouses are not necessary to prevent terrorist finance. This reduces the impact of a direction on the family of a designated person, whilst ensuring that controls remain in place to ensure persons subject to an asset freeze are not able to access funds for terrorist purposes. This change also reflects a recent European Court judgment.
Requirement for report of past activity	Financial institutions must inform HM Treasury of any funds or economic resources held by them for a designated person at any time up to five years prior to their designation. [Article 18(2)]	No such requirement. Institutions may be asked on a case-by-case basis where information necessary for compliance with a direction	Requirement to provide information on past financial activity removed after consultation with the financial sector. Financial institutions are now required to report only on their current customers.
Quarterly Report	No requirement to report.	HM Treasury must present quarterly reports to Parliament on the operation of the powers in the Bill. [Clause 24]	There should be transparency and accountability of the use of the powers.
Independent Review	No provision for independent review.	HM Treasury must appoint an independent person to review the operation of the powers in the Bill and lay a report before Parliament. [Clause 25]	It is important that there is transparency and independent scrutiny of the use of the powers in the Bill. The independent reviewer will be free to consider all aspects of the operation of the regime and make recommendations.