

**FIRST REPORT ON THE OPERATION OF  
THE TERRORIST ASSET-FREEZING ETC. ACT 2010**

(REVIEW PERIOD: DECEMBER 2010 TO SEPTEMBER 2011)

**BY  
DAVID ANDERSON Q.C.**

**Independent Reviewer of Terrorism Legislation**

**DECEMBER 2011**

Presented to Parliament  
pursuant to  
Section 31 of the  
Terrorist Asset-Freezing etc. Act 2010



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## **EXECUTIVE SUMMARY**

- The Act under review gives the Treasury power to freeze the assets of individuals and groups thought to be involved in terrorism, whether in the UK or abroad, and to deprive them of access to financial resources. It implements UN Security Council Resolution 1373 and is one of a number of measures at the Government's disposal for preventing the financing of terrorism.
- At the end of the review period in September 2011:
  - 30 individuals and 8 groups were designated by the Treasury under the Act. This is much reduced from the figure in previous years, owing largely to the removal of duplicate designations.
  - Each of the designated groups had been listed since 2001, as had some of the designated individuals. No individual or group was designated during the review period. No individual or group associated with Northern Ireland was designated, despite continuing terrorist activity there.
  - The prohibitions in the Act applied also to 22 individuals and 25 groups listed by the EU under Regulation 2580/2001.
  - The total quantity of assets frozen, taking the Treasury and EU lists together, was some £100,000. Many of those designated had few if any assets in the United Kingdom.

These and other facts cause me to believe that TAFE 2010 is an ancillary rather than a central part of the fight against terrorism.

- The majority of designated individuals or groups are either imprisoned in the UK, often as a consequence of their involvement in major terrorist plots, or based overseas. In such cases, designation normally has little practical effect and is rarely challenged in the courts.
- Five designated persons, at the end of the review period, were at liberty in the UK, three having been released from prison and two having never been convicted. For them and for their families, the need to seek approval and to account for every item of expenditure may be experienced as intrusive and humiliating to the point where it feels like punishment.
- The Act is an improvement on laws that preceded it, in particular because of the requirements that designation can be made only on the basis of reasonable belief

(rather than suspicion) of involvement in terrorism, and only if its designation is necessary for purposes connected with protecting the public from terrorism.

- It has not been suggested to me that any risk to public safety has followed from these changes, though by the end of the period under review two individuals and two organisations had been delisted as a result of them.
- It may however be questioned whether the necessity test is met in all cases, particularly where the designated person is in prison or abroad.
- The Asset-Freezing Unit at the Treasury, which has primary responsibility for operating the Act, has been generally accessible and responsive to requests during the period under review. This again represents an improvement on perceptions in past years, and I commend them for it.
- As the operation of the Act beds down, there is however room for improvement. I do not at this stage advise that the Act should be amended, but do make recommendations concerning:
  - **Grounds for designation:** the Treasury should explain to Parliament both the basis on which it considers that the necessity test will be satisfied and the basis on which it exercises its discretion to designate. It should also make it clear that no designation will be made without consideration of whether designation is proportionate.
  - **Procedures for designation and review:** the Treasury should ensure that all available alternative options, including prosecution, are considered at a formal meeting on the basis of input from all relevant departments and agencies.
  - **Transparency:** I suggest improvements to the Treasury's quarterly reports and to its website that will make it easier for Parliament and the public to understand how the Act is being used.
  - **Licensing and compliance:** I make recommendations concerning the drafting of licences under the Act, dialogue between financial institutions, regulators and the Treasury and the production of a list of FAQs to make it clearer to designated persons what they are and are not permitted to do.
- My full conclusions and recommendations are set out at sections 10 and 11 respectively.



## 1. INTRODUCTION

### Origin of this report

- 1.1. Part 1 of the Terrorist Asset-Freezing etc. Act 2010 [**TAFA 2010**] gives the Treasury power to freeze the assets of individuals and groups thought to be involved in terrorism, whether in the UK or abroad, and to deprive them of access to financial resources. That power operates independently of the criminal justice system: it can be used whether or not a designated individual has been charged with or convicted of a criminal offence. It has the potential, however, to be highly intrusive and restrictive of everyday life. Those in custody or abroad may, depending on their circumstances, be barely affected at all. In other cases, however, those designated have been described as “*effectively prisoners of the state*”.<sup>1</sup>
- 1.2. Exceptional powers require exceptional safeguards. One of those safeguards, where TAFA 2010 is concerned, is the provision made by section 31 for the independent review of its operation.<sup>2</sup> Independent review has been a feature of UK terrorism legislation since the 1970s. TAFA 2010 section 31 is modelled on the requirements for independent review of the Terrorism Acts 2000 and 2006 [**TA 2000, TA 2006**] (proscription, terrorist property and investigations, arrest and detention, stop and search, prosecutions) and the Prevention of Terrorism Act 2005 [**PTA 2005**] (control orders).<sup>3</sup>

### Independent Reviewer

- 1.3. I am the first Independent Reviewer of TAFA 2010, having been invited by the Government Minister Lord Sassoon, Commercial Secretary to the Treasury, to perform that role for a period of three years from February 2011. At the same time I was appointed by the Home Secretary to review TA 2000, PTA 2005 and Part 1 of TA 2006, in succession to Lord Carlile of Berriew Q.C. It is open to the Independent Reviewer also to produce other reports connected with terrorism legislation, either at ministerial invitation or on his own initiative.<sup>4</sup> No previous independent review has however been conducted into asset-freezing, and the topic did not fall within the remit of the Independent Reviewer prior to TAFA 2010.

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<sup>1</sup> *Ahmed and others v HM Treasury* [2010] UKSC 2, [2010] 2 AC 534, per Lord Hope at para 4, citing Sedley LJ in the Court of Appeal at para 125. The comment related to a predecessor regime to TAFA 2010, based on similar principles.

<sup>2</sup> The Part 2 of TAFA 2010 amends Schedule 7 to CTA 2008 and falls outside the scope of the review contemplated by TAFA 2010 section 31.

<sup>3</sup> PTA 2005 section 14; TA 2006 section 36. Clause 20 of the TPIM Bill, which will replace PTA 2005, also provides for independent review.

<sup>4</sup> The Home Secretary acknowledged the Independent Reviewer's power to issue ad hoc reports in a statement recorded in HC Deb 18 July 2011 col 85WS: see JCHR 17<sup>th</sup> Report of Session 2010-2012, HL Paper 192 HC 1483, para 40.

1.4. The uniqueness of the Independent Reviewer's post derives from a combination of two factors:

(a) complete independence from Government; and

(b) unrestricted access, based on a very high level of security clearance, to documents and to personnel within Government, the police and the security services.

Its authority derives also from listening to the widest possible range of those affected by the laws against terrorism, including those against whom they have been applied.

1.5. The duties of the Independent Reviewer are performed on a part-time basis, without staff or assistants, and remunerated at a daily rate. I have facilities in the Home Office for meetings and for inspecting confidential documents, and Treasury and Home Office officials have been most helpful in arranging contacts within Government, security services and police. However I come to the post from the background of practice at the self-employed Bar, which I continue to combine with part-time judicial and academic commitments, and I remain based in my London Chambers.

1.6. Prior to assuming the post of Independent Reviewer I appeared as counsel for the subject in a number of asset-freezing cases before the courts of the European Union [EU]. They included the well-known case of *Kadi v Council of the European Union*, in which Mr. Kadi contended that the freezing of his assets should be annulled as contravening the fundamental rights guaranteed by EU law.<sup>5</sup> The other cases did not concern terrorist sanctions but raised legal issues that might also arise in terrorist asset-freezing cases.<sup>6</sup> I resigned from all these cases on accepting part-time appointment as Independent Reviewer, and for the duration of that appointment have undertaken not to appear in cases related to my new responsibilities.

1.7. The history of independent review and the current role of the Reviewer are summarised at <http://terrorismlegislationreviewer.independent.gov.uk>, where copies of previous reports, future plans and contact details can also be found. I

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<sup>5</sup> The cases in which I appeared for Mr. Kadi were his successful appeal in Joined Cases C-402/05P and C-415/05P [2008] ECR I-6351, and his subsequent challenge to a renewed asset freeze: Case T-85/09, 30 September 2010. That judgment has been appealed, without my involvement: Joined Cases C-584/10 P, C-593/10 P and C-595/10 P (pending).

<sup>6</sup> Case T-181/08 *Tay Za v Council* 19 May 2010; Case T-246/08 *Melli Bank v Council* [2009] ECR II-2629; Cases C-380/09 P *Melli Bank v Council*, T-492/10 *Melli Bank v Council*, T-493/10 *Persia International Bank v Council*, T-494/10 *Bank Saderat Iran v Council*, T-495/10 *Bank Saderat v Council*, T-496/10 *Bank Mellat v Council* (pending).

travel widely in the exercise of my functions and welcome contact, on a confidential basis if required, from anyone with relevant experience or knowledge.

### **Scope of this review**

- 1.8. The scope of this review extends only to Part 1 of TAFE 2010, which covers the whole of the terrorist asset-freezing regime introduced by the Act. Part 2 of TAFE 2010 contains amendments to a different regime, under Schedule 7 to CTA 2008, and Part 3 contains miscellaneous final provisions.
- 1.9. Other asset-freezing measures capable of application to suspected terrorists (as to which, see 2.1 below) are not the subject of independent review.

### **Time period covered**

- 1.10. This review period, the first provided for by TAFE 2010 section 31, extends from 17 December 2010 to 16 September 2011. Subsequent review periods will be of 12 months' duration, starting on 17 September of each year.

### **Approach to this review**

- 1.11. In reviewing the operation of TAFE 2010, I have asked myself whether the powers conferred by the Act serve a necessary purpose and whether they are being coherently, effectively, fairly and proportionately used. Where improvements can be made, I recommend them. Where an issue needs to be addressed but my knowledge is insufficient to be sure of the best solution, I recommend that changes or a range of possible changes be considered.
- 1.12. My review has been conducted against the background of the security context and operational needs of the UK's intelligence and law enforcement agencies. I have also had regard to the impact of these powers on civil liberties, and to the practical impact of designation on those subject to it and their families. Without embarking upon a full-scale comparative study, I have sought to keep in mind other asset-freezing regimes, both within the UK and internationally. I have also had regard to other counter-terrorism measures whose function may be considered to some extent analogous to asset-freezing: in particular, the proscription of organisations,<sup>7</sup> the laws penalising the funding of terrorism<sup>8</sup> and

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<sup>7</sup> TA 2000 Part II.

<sup>8</sup> TA 2000 Part III; Anti-Terrorism Crime and Security Act 2001 [ATCSA 2001] section 1 and Schedule 1.

the power to impose control orders<sup>9</sup> (together with their successors, Terrorism Prevention and Investigation Measures **[TPIMs]**).

1.13. The Act is a recent one, enacted after full and vigorous debate in Parliament, and in a number of respects it remains untested. In those circumstances I have not thought it appropriate to recommend that the Act itself be amended. As experience of its application increases, it is possible that I may in the future make such a recommendation, as my predecessors and I have done in relation to other statutes.

1.14. This report is longer than I would have wished it to be, because it is the first of its kind and because, in an attempt to make it useful to those not already expert in the arcane field of asset-freezing law, I have felt it necessary to locate the Act under review in its complex international, European and domestic context. I would hope and expect that subsequent reports will be significantly shorter.

### **Resources and methodology**

1.15. The Treasury made its files freely available to me, and provided me with a place to read them. I have been shown everything that I requested to see for the purposes of this review, including legal advice given to the Government and top secret intelligence relating to those designated under the Act. Officials and lawyers within Government have discussed ideas at my invitation and checked a draft of this report for accuracy, without of course seeking to alter the opinions expressed. I am grateful also to my Special Adviser, Professor Clive Walker of the University of Leeds, and to Cian Murphy of King's College London for their comments on drafts of the report. I take full responsibility for any remaining errors.

1.16. I have had discussions with Lord Sassoon and Treasury officials, with civil servants from the Office of Security and Counter-Terrorism at the Home Office **[OSCT]**, with police officers working in this field and with other departments and agencies. I have consulted compliance officers with recent or current experience at two large banks which administer asset freezes, as well as the British Bankers' Association **[BBA]**. I have also spoken to those associated with entities whose assets have been frozen, to individuals who are or have been subjected to asset freezes, to solicitors acting on their behalf and to barristers instructed for the parties to asset-freezing cases and as special advocates. A number of these sources preferred to speak to me on the basis that they would not be identified by name, and I have honoured their wishes so as to be able to convey their views as frankly as possible.

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<sup>9</sup> PTA 2005.

- 1.17. Since this is the first review conducted under TAFSA 2010, I have read the files on all 38 persons and groups that were designated under the Act at the end of the review period. These include the files of two individuals (Ismail Bhuta and Zana Rahim) who are unique among those designated during the period under review in that they are resident in the United Kingdom and have never been convicted of a terrorist offence. Perhaps not coincidentally, these were the only two persons to appeal against their designations. Ismail Bhuta was delisted in November 2011.
- 1.18. Although I have reviewed each of these files, it should be quite clear that my function is not to comment or to pronounce upon individual cases. A judicial procedure exists for that purpose. The reason I have looked at individual files is to see whether they indicate systemic problems with, or possible improvements to, the operation of the Act.

## 2. FINANCIAL MEASURES AGAINST TERRORISM

### Terrorist asset-freezing regimes

2.1. There are three distinct regimes for terrorist asset-freezing under United Kingdom law:

- (a) Part II of the Anti-terrorism, Crime and Security Act 2001 [**ATCSA 2001**], an asset-freezing power which is not restricted to terrorism but which is in other respects more limited than the TFA 2010 power. Orders may be made for up to two years, but only where the Treasury reasonably believe that there is a specified threat to UK nationals, UK residents or the UK economy, and only when that threat emanates from a foreign government or foreign resident.
- (b) The Al-Qaida and Taliban (Asset-Freezing) Regulations 2010 [**AQAFR 2010**], which set criminal penalties for breaching the EU Regulation which implements sanctions imposed by the UN Sanctions Committee pursuant to UN Security Council Resolution 1267 of 15 October 1999. [**UNSCR 1267**]<sup>10</sup>
- (c) Part 1 of TFA 2010, which gives effect to UN Security Council Resolution 1373 of 28 September 2001 [**UNSCR 1373**], and provides for the enforcement of the EU measure implementing UNSCR 1373, Council Regulation (EC) 2580/2001.

Also relevant in this context is the Counter-Terrorism Act 2008 [**CTA 2008**], Part 5 and Schedule 7, which allows a variety of restrictions to be placed on transactions or business relationships with foreign countries or governments.<sup>11</sup> The trigger for such action is either advice from the Financial Action Task Force [**FATF**], an organ of the G8; reasonable belief that there is a risk of terrorist financing or money laundering activity that poses a significant risk to the national interests of the United Kingdom; or reasonable belief of a significant risk associated with nuclear, radiological, biological or chemical weapons.

2.2. From the Government's point of view, each of those regimes has advantages and disadvantages. The ATCSA 2001 regime does not require a terrorist link, but the targets are limited geographically and by the maximum duration of a freeze. Designation under UNSCR 1267 requires the consensus of all Sanctions Committee members (and so can take longer than a domestic designation) and

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<sup>10</sup> With effect from November 2011, following UNSCR 1988 (2011) and UNSCR 1989 (2011), the Al-Qaida sanctions were split off into a new instrument, the Al-Qaida (Asset-Freezing) Regulations 2011, SI 2011/2742 [**AQAFR 2011**].

<sup>11</sup> This power was used on non-proliferation grounds for the Financial Restrictions (Iran) Order 2009, SI 2009/2725 (see *Bank Mellat v HM Treasury (No. 2)* [2011] EWCA Civ 1; [2011] 3 WLR 714) and the Financial Restrictions (Iran) Order 2011 SI 2011/2775.

limited to groups and individuals associated with Al-Qaida; but once achieved, it is global in its effects. Designation under TFAFA 2010 can be extremely quick and may be used on targets at home and abroad; but it will have effects only within the United Kingdom (and on UK bodies and nationals overseas),<sup>12</sup> unless used to form the basis of a nomination for the UN or EU lists.<sup>13</sup>

- 2.3. My statutory powers of review extend only to the TFAFA 2010 regime – an anomalous state of affairs, which results from the haphazard way in which the functions of the Independent Reviewer have developed over time. In practice, however, the TFAFA 2010 regime is the default option where the unilateral freezing of terrorist assets is concerned. Neither the ATCSA 2001 regime<sup>14</sup> nor the CTA 2008 regime<sup>15</sup> has yet been used in a terrorist context.

### Other financial measures

- 2.4. Various measures other than asset-freezing are available to the United Kingdom authorities for the purposes of inhibiting the financing of terrorism. These include, in particular:

- (a) The **prosecution** of individuals for “*terrorist property*” offences. These include fundraising for the purposes of terrorism (including for the purposes of a proscribed organisation), use and possession of property for the purposes of terrorism, participation in arrangements for the funding of terrorism and the laundering of terrorist property, each capable of being committed outside the United Kingdom and punishable by up to 14 years in prison.<sup>16</sup>
- (b) The **criminal forfeiture** of money or other property used or intended to be used for the purposes of terrorism, by the criminal court before which a person has been convicted for a terrorist offence or an offence with a terrorist connection.<sup>17</sup>

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<sup>12</sup> TFAFA 2010 section 33.

<sup>13</sup> As was the case with the five persons of Iranian origin who were designated after the end of the period covered by this review: HM Treasury General Notice of 17 October 2011.

<sup>14</sup> Its only use to date has been in 2008, to prevent the British branch of Landsbanki, an Icelandic bank, from transferring assets to Iceland, an action which was deemed to be threatening the national economy within the meaning of ATCSA 2001 section 4: Landsbanki Freezing Order 2008, SI 2008/2668, as amended by SI 2008/2766 and revoked by SI 2009/1392.

<sup>15</sup> The 2008 regime has however been used in relation to Iranian nuclear proliferation: Financial Restrictions (Iran) Order 2009, SI 2009/2725.

<sup>16</sup> TA 2000 sections 14-18, 22, 63. In addition, financial intermediaries and others are obliged to report suspicions to the authorities, and financial institutions may be required to provide customer information or to monitor accounts for the purposes of a terrorist investigation: sections 19 and 21A-22A.

<sup>17</sup> TA 2000 sections 23-23B, as inserted by CTA 2008.

- (c) The **civil seizure** of cash reasonably suspected of being terrorist cash: the cash may be detained pending investigations and forfeit if a court is satisfied on the balance of probabilities that it is terrorist cash.<sup>18</sup>
- (d) The inclusion of financial restrictions in **control orders**, including a restriction to one bank account or one credit card.<sup>19</sup>
- (e) The **proscription** of organisations, which renders the assets of those organisations terrorist property or terrorist cash for the purposes of (a) and (c) above.<sup>20</sup>
- (f) The making of **financial information orders** and **account monitoring orders** pursuant to TA 2000 Schedules 6 and 6A.
- (g) The use of **Proceeds of Crime Act 2002 [POCA 2002]** powers to prosecute money laundering<sup>21</sup> and to effect criminal confiscation<sup>22</sup> civil recovery<sup>23</sup> of assets which are the proceeds of crime.

There is also a series of obligations on financial services providers and others to monitor activity and inform the police or the Serious and Organised Crime Agency [**SOCA**] of any suspicion that money may be made available for terrorist purposes, or that a terrorist finance offence has been committed.<sup>24</sup>

- 2.5. Depending on the circumstances, some of these powers may be alternatives to asset-freezing or used in combination with it. It is therefore important to ensure that the relative merits of one option over another are considered coherently.

#### **Asset-freezing: preventative or punitive?**

- 2.6. The freezing of terrorist assets is mandated by international law as a means by which to “*prevent and suppress the financing of terrorist acts*”.<sup>25</sup> The FATF sees asset-freezing, together with seizure of terrorist funds, as

*“necessary to deprive terrorists and terrorist networks of the means to conduct future terrorist activity and maintain their infrastructure and operations”*.<sup>26</sup>

<sup>18</sup> ATCSA 2001 section 1 and Schedule 1.

<sup>19</sup> PTA 2005 section 1(4)(b); see also the “financial services measure” provided for by the TPIM Bill, Schedule 1 para 5.

<sup>20</sup> Though proscription creates no directly equivalent offence to the prohibition under TAFE 2010 on making funds and economic resources available to a third party where that confers a significant financial benefit on a designated person has no directly equivalent P offence.

<sup>21</sup> POCA 2002 Part VII.

<sup>22</sup> POCA 2002 Parts II-IV.

<sup>23</sup> POCA 2002 Part V.

<sup>24</sup> TA 2000 sections 19, 21A-21C; Money Laundering Regulations 2007 SI 2007/2157.

<sup>25</sup> UNSCR 1373, Article 1(a).



It explains the intent behind asset-freezing as purely preventative, contrasting it in this respect with seizure, where the intent is both preventative and punitive. The need for asset freezing to serve a preventative purpose is evident also from TAFE 2010, which requires the Treasury to be satisfied that the application of financial restrictions is necessary for purposes connected with “*protecting members of the public from terrorism*”.<sup>27</sup>

- 2.7. Although asset-freezing is merely preventative in its *intent*, there are cases in which it may well seem punitive in its *effects*. In the words of the English Court of Appeal:

“.. the nature and purpose of freezing orders can themselves be legitimately described as both a step in the international struggle to contain terrorism and as a targeted assault by the state on an individual’s privacy, reputation and property.”<sup>28</sup>

As the UN Commissioner for Human Rights reported to the UN General Assembly in relation to the UNSCR 1267 regime:

“Because individual listings are currently open-ended in duration, they may result in a temporary freeze of assets becoming permanent which, in turn, may amount to criminal punishment due to the severity of the sanction. This threatens to go well beyond the purpose of the United Nations to combat the terrorist threat posed by an individual case.”<sup>29</sup>

The point was picked up by the General Court of the EU, which remarked in the context of a long-standing freeze under the same regime:

“In the scale of a human life, 10 years in fact represent a substantial period of time and the question of the classification of the measures in question as preventative or punitive, protective or confiscatory, civil or criminal seems now to be an open one.”<sup>30</sup>

- 2.8. These comments are relevant to TAFE 2010, for while sanctions under the Act must be renewed every year, there is no limitation on the number of renewals that may be made. This is in notable contrast to the system for TPIMs, the proposed replacement for control orders: a TPIM notice will be limited to a

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<sup>26</sup> FATF IX Special Recommendations, Interpretative Note to Special Recommendation III, para 2.

<sup>27</sup> TAFE 2010, section 2(1)(b).

<sup>28</sup> *Secretary of State for the Foreign and Commonwealth Office v Maftah and Khaled* [2011] EWCA Civ 350, para 26. The Court of Appeal however went on to hold that Article 6 did not apply to the review of a decision to procure the freezing under UNSCR 1267 of the assets of an individual suspected or believed to have participated in or facilitated terrorism-related activity, a conclusion that has since been applied also to designations under TAFE 2010: *R (Bhutta) v HM Treasury* [2011] EWHC 1789 (Admin), para 15.

<sup>29</sup> Report on the protection of human rights and fundamental freedoms while countering terrorism, 2 September 2009, A/HRC/12/22, para 42.

<sup>30</sup> Case T-85/09 *Kadi II*, Judgment of 30 September 2010 at para 150 (currently under appeal to the Court of Justice of the EU [CJEU]).

maximum of two years, and may be superseded by a new notice only on the basis of evidence of further engagement in terrorism-related activity.<sup>31</sup>

### The value of asset-freezing

2.9. The success or otherwise of asset freezes in preventing terrorist acts is difficult to gauge with any accuracy. While the cost of the 9/11 attacks has been put at between \$400,000 and \$500,000,<sup>32</sup> subsequent events have shown that even major acts of terrorism can be committed at relatively low cost. Thus:

- (a) The cost of the 7/7 attacks and the Madrid train bombings have each been estimated at about \$10,000, and the cost of an IED in Iraq at \$100.<sup>33</sup>
- (b) Al-Qaida in the Arabian Peninsula [**AQAP**] has itself identified the total cost of preparing and mailing two printer cartridge bombs from Yemen in October 2010 as \$4,200.<sup>34</sup>

The low cost of terrorism is often used as a justification for freezing the assets of persons who have few possessions and are not in the habit of handling large sums of money. But it might equally be argued that with so little money required, and so many ways of acquiring it, asset freezing (at least at the limited scale on which it currently operates) is a hit-or-miss affair with uncertain effects on the terrorist threat.<sup>35</sup>

2.10. The impression of TAFE 2010 in particular as a power which is an ancillary rather than a central element of the fight against terrorism is reinforced by:

- (a) the small sums frozen (totaling only £100,000 at the end of the review period);
- (b) the fact that each of the currently designated organisations has been listed since 2001;<sup>36</sup>
- (c) the absence of new designations of any kind under TAFE 2010 during the period under review; and
- (d) the complete absence from the current list of any person or organisation associated with Northern Irish terrorism.

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<sup>31</sup> TPIM Bill, clauses 3(2), 3(6) and 5.

<sup>32</sup> National Commission on Terrorist Attacks upon the United States, *9/11 Report*, Appendix A.

<sup>33</sup> HM Treasury, *Public consultation: draft terrorist asset-freezing bill*, Cm 7852, March 2010, para 2.2..

<sup>34</sup> *Printer cartridge plot planning revealed*, BBC website 22 November 2010.

<sup>35</sup> See section 5, below.

<sup>36</sup> See 5.26 below, and subject to the change in Hizballah's designation referred to at 5.13, below. Each of the 26 entities designated under the Terrorism Orders (the predecessors of TAFE 2010) between 2002 and 2007 have since been delisted.

2.11. That said, asset freezes can have a deterrent and disruptive effect, and the fact that such effect is unquantifiable does not mean that it is trivial. Thus:

- (a) Designation of a known terrorist organisation with a history of fundraising in the United Kingdom may be assumed to have useful disruptive effects, even if the group's activities are chiefly directed abroad.
- (b) A freeze applied when a plot is foiled (as in the case of the 21/7 bombers and Operation Overt) may help safeguard against the risk that other plot members remain at large and have the capacity to do damage with the assets of those arrested.
- (c) The Treasury emphasise the centrality of London as an international financial centre, which coupled with the interconnectedness of global finance is said to mean that an asset freeze in the United Kingdom is of more value than it might be elsewhere.

It is more difficult to judge the need for an asset freeze in the case of a person who currently has no significant resources, who has no connection with the United Kingdom, who is in prison or in respect of whom the evidence of recent terrorist involvement is sparse or non-existent.

2.12. The benefits of designation may go beyond its direct role in disrupting the financing of terrorism. For example:

- (a) The notification of a new designation to financial institutions, who then run their checks on the person concerned, sometimes has the effect of flushing out previously unknown accounts and thus shedding additional light on terrorist networks.
- (b) Designation is widely believed within Government to be effective in "*sending a signal*" of serious intent – whether that signal is received by the designated person, by others engaged in similar activity or as a demonstration of solidarity with the UK's international partners in the global struggle against terrorism.

It must not be forgotten, however, that to be lawful under TFA 2010, any designation must be "*necessary for purposes connected with protecting members of the public from terrorism*".<sup>37</sup> It will be for the courts to decide in future cases whether benefits such as these are sufficient to satisfy this element of the statutory test.

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<sup>37</sup> TFA 2010 section 2(1)(b): see 3.20(d) and 6.22-6.27, below.

### 3. GENESIS OF THE ACT

#### UN Charter

- 3.1. TFAFA 2010 must be understood in the context of the UN and EU measures that preceded it and to which it was designed to give effect.
- 3.2. All such measures have their basis in Chapter VII of the UN Charter, Article 41 of which states:

“The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.”
- 3.3. Traditionally, Chapter VII sanctions – as suggested by the illustrative examples in Article 41 – provided for the interruption of economic relations with states. Criticism of the effect of state sanctions on the innocent population of the states in question however prompted a trend in the 1990s towards “*smart sanctions*”: collective measures, agreed at international level, against individuals.<sup>38</sup> UNSCR 1267 (1999), though aimed at the Taliban in its capacity as the ruling regime in Afghanistan, gave the UN a role in designating individuals and groups connected to the Taliban. UNSCR 1333 (2000) continued this trend in relation to Osama bin Laden and the Al-Qaida network.
- 3.4. The trend towards smart sanctions has had profound implications for the processes by which sanctions are adopted, implications which are only now being worked through at UN, regional and national level. While states, as members of the UN, have standing to speak for themselves, individuals have no representation in international fora and cannot count on their own state to make representations on their behalf, particularly when the measure against them was proposed by that state. This has led to widespread calls for procedural due process to be injected into procedures for the adoption of sanctions both within the UN and by those charged with implementing UN measures.<sup>39</sup>

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<sup>38</sup> This tendency was seen for example in the 1997 UN sanctions against the rebels in Angola, and the 1998 EU sanctions against the governments of FRY and Serbia.

<sup>39</sup> See, e.g., Case T-85/09 *Kadi II*, Judgment of 20 September 2010, currently under appeal to the CJEU. Martin Scheinin, the outgoing UN Special Rapporteur on human rights and counter-terrorism, drew attention on 29 June 2011 to reforms of the UN’s procedures (in particular, the introduction and strengthening of the Delisting Ombudsperson) but concluded that the procedures for terrorist listing and delisting by the 1267 Committee of the Security Council still “do not meet international human rights standards concerning due process or fair trial”: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11191&LangID=E>.

## UNSCR 1373

3.5. UNSCR 1373 is the basis for TAFSA 2010. It was adopted under Chapter VII of the UN Charter on 28 September 2001, in the immediate aftermath of the 9/11 attacks. Unlike its predecessors, UNSCR 1267 (1999) and UNSCR 1333 (2000),<sup>40</sup> UNSCR 1373 did not specify individuals or entities whose assets were required to be frozen worldwide. It did however require all States to:

- (a) prevent and suppress the financing of terrorism,
- (b) criminalise the wilful provision and collection of funds to be used for terrorism,
- (c) freeze the funds, financial assets and economic resources of terrorists and associated entities, and
- (d) prohibit all those within their jurisdiction from making funds, financial assets, economic resources and financial services available to terrorists and associated entities.”<sup>41</sup>

States were thus required to give effect to the new orthodoxy of smart sanctions by compiling their own lists and freezing the assets of those designated. They were left with a wide discretion as to how those lists were to be compiled: terrorism was not defined, and no guidance was given as to the standard by which “*terrorists and associated entities*” were to be identified.<sup>42</sup>

3.6. The UN certainly acted speedily when adopting UNSCR 1373. Whether its speed was matched by its wisdom has been the subject of debate. Thus:

- (a) While the Security Council “*worked with what was at hand in terms of the 1999 Convention and the 1267 process*”, the approach that it required all states to adopt was “*not the result of informed analysis of the causes of 9/11 or of the effectiveness of laws prohibiting the financing of terrorism*”.<sup>43</sup>
- (b) When authoritative analysis came, in the shape of the Report of the 9/11 Commission in 2004, it was somewhat sceptical: the Commission concluded that “*if a particular funding source had dried up, Al Qaeda could easily have*

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<sup>40</sup> Implemented by Regulation (EC) 467/2001, sanctions for breach of which were provided for by the UK measures culminating in AQTFTR 2010.

<sup>41</sup> Resolution 1373(2001), para 1.

<sup>42</sup> Though Resolution 1373, para 3(c) did call upon states to become parties to the International Convention for the Suppression of Financing of Terrorism 1999, Article 2(1) of which defines terrorism in broad terms.

<sup>43</sup> Kent Roach, *The 9/11 effect: comparative counter-terrorism*, CUP 2011, p. 39. I am indebted to this book for some of the references that follow.

*tapped a different source or diverted funds from another project”, and that “trying to starve the terrorists of money is like trying to catch one kind of fish by draining the ocean.”<sup>44</sup>*

- (c) Richard Barrett, co-ordinator since 2004 of the UN 1267 Monitoring Team, has more recently questioned the efficacy of the UN-promoted asset-freezing schemes, commenting in relation to UNSCR 1267 that as Al-Qaida terrorism has become decentralised and the money needed for attacks has become smaller, *“financing may become decreasingly relevant to efforts to contain the threat”*.<sup>45</sup>
- (d) Questions as to the efficacy of asset-freezing have been matched by concerns about its impact on the human rights of those affected by a freeze, in terms both of its effect on private life and of non-existent or limited access to a judicial remedy. It has even been suggested that asset-freezing, particularly where focused on the activities of charities, may contribute to some of the dislocation that may fuel extremism and terrorism.<sup>46</sup>

The fact remains, however, that all members of the United Nations are obliged to implement UNSCR 1373 in their own laws.

## **EU implementation**

- 3.7. The EU has powers under its Treaties to adopt sanctions on behalf of its Member States.<sup>47</sup> In 2001, it chose to take its own measures to implement UNSCR 1373.<sup>48</sup>

### ***The Common Position***

- 3.8. One such measure, adopted under the Common Foreign and Security Policy, was Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism [**the Common Position**].<sup>49</sup> This defined

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<sup>44</sup> National Commission on Terrorist Attacks upon the United States, *9/11 Report*, paras 5.4, 12.3.

<sup>45</sup> Richard Barrett, “Time to Re-examine Regulation Designed to Counter the Financing of Terrorism”, (2009) *Case Western Reserve Journal of International Law* 7, at p. 11.

<sup>46</sup> Nina Crimm, “The moral hazard of anti-terrorism financing measures: a potential to compromise civil societies and national interests” (2008) 43 *Wake Forest Law Review* 577.

<sup>47</sup> Treaty on the Functioning of the European Union, Articles 75 and 215. Prior to December 2009, the relevant powers were in Articles 15 and 34 of the Treaty on European Union and in Articles 60, 301 and 306 of the Treaty establishing the European Community.

<sup>48</sup> The EU has since the entry into force of the Lisbon Treaty in December 2009 superseded both the European Community and the European Union as they existed prior to that date. In this report, “EU” is generally used to refer both to the current EU and to its predecessor bodies. In order to make sense of the measures of 2001, however, it is necessary to understand that action by the (old) European Community was necessary in order to give the force of law to foreign policy measures adopted by the (old) European Union.

<sup>49</sup> 2001/931/CFSP, OJ L344, 28.12.2001, pp. 93-96.

terrorism, and committed the EU to ordering asset freezes against persons, groups and entities listed in the annex to the Common Position.

3.9. The list in the Annex was to be drawn up:

“on the basis of precise information or material in the relevant file which indicates that a decision has been taken by a competent authority in respect of the persons, groups and entities concerned, irrespective of whether it concerns the instigation of investigations or prosecution for a terrorist act, an attempt to perpetrate, participate in or facilitate such an act based on serious and credible evidence or clues, or condemnation for such deeds.”<sup>50</sup>

The term “*competent authority*” denotes, for this purpose, a judicial or other authority in one of the Member States (or, exceptionally, a non-EU country). Persons, groups or entities identified by the UN Security Council as being related to terrorism and against whom it had ordered sanctions may also be included on the list.<sup>51</sup>

3.10. The names on the list in the Annex were to be reviewed “*at regular intervals and at least once every six months to ensure that there are grounds for keeping them on the list*”.<sup>52</sup>

#### **Regulation 2580/2001**

3.11. Adopted on the same day, and implementing the Common Position, was Council Regulation (EC) 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism [**Regulation 2580/2001**].<sup>53</sup> Like other Regulations, it is binding in its entirety and directly applicable in all Member States. It is however for the Member States to impose effective, proportionate and dissuasive sanctions for its infringement.<sup>54</sup>

3.12. Regulation 2580/2001 places the Council of the EU under a legal obligation to establish, review and amend the EU list provided for by the Common Position.<sup>55</sup> That list is to consist of:

“(i) natural persons committing, or attempting to commit, participating in or facilitating the commission of any act of terrorism;

(ii) legal persons, groups or entities committing, or attempting to commit, participating in or facilitating the commission of any act of terrorism;

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<sup>50</sup> Article 1(4).

<sup>51</sup> *Ibid.*

<sup>52</sup> Article 1(6),

<sup>53</sup> OJ L344, 28.12.2001, pp. 70-75.

<sup>54</sup> Articles 9, 11.

<sup>55</sup> Article 2(3).

(iii) legal persons, groups or entities owned or controlled by one or more natural or legal person, groups or entities referred to in points (i) or (ii); or

(iv) natural or legal persons, groups or entities acting on behalf of or at the direction of one or more natural or legal persons, groups or entities referred to in points (i) and (ii).”

As provided in the Common Position, addition to the EU list is conditional upon a decision having been taken by a national competent authority. The United Kingdom will normally propose a person for addition to the EU list only if that person has already been subject to a domestic asset freeze (or, in the case of an organisation, proscribed under TA 2000 Part II). However convictions, prosecutions and even “*the instigation of investigations*” may, according to the Common Position, suffice. Proposals for EU listing are, in practice, made by the Member State (or one of the Member States) whose competent authority has taken a decision in relation to the person or entity concerned.

- 3.13. Although the asset freezes provided for by the Regulation are binding across the EU, Member States are given the power to grant specific authorisations, on their own initiative, for frozen funds to be used to meet the “*essential human needs*” of persons on the list and their families, and to pay taxes, utility bills, bank charges and pre-existing debts.<sup>56</sup> After consulting other Member States, the Council and the Commission, they may also grant specific authorisations for other purposes.<sup>57</sup>

### UK implementation

- 3.14. It has been suggested that the statutory measures already existing to deal with the funding of terrorism were “*arguably*” enough to constitute compliance with UNSCR 1373, even without TFAFA 2010.<sup>58</sup> This seems to me doubtful, since the ATCSA 2001 regime does not permit the assets of terrorists who are based in the UK and/or intending harm other than to UK nationals or interests. Some implementation was probably necessary, therefore, in order to fill the gaps.

- 3.15. It seems plain however that TFAFA 2010 – like its predecessors, the Terrorism Orders – granted powers in excess of the minimum UN requirements. An example is the setting of the primary trigger for designation at the level of “*reasonable suspicion*” (Terrorism Orders; interim designation under TFAFA 2010) or “*reasonable belief*” (final designation under TFAFA 2010). Though opinions differ as to how prescriptive UNSCR 1373 was intended to be, there is little doubt

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<sup>56</sup> Article 5.

<sup>57</sup> Article 6.

<sup>58</sup> Joint Committee of Human Rights, *Legislative Scrutiny: Terrorist Asset-Freezing etc. Bill (Preliminary Report)* HL Paper 41, HC 535, 22 October 2010, evidence of Henry Miller and Anne McMurdie, p. 46 at para 15.



that it could have been sufficiently implemented by a power to designate only upon proof – whether to the civil or criminal standard – that an act of terrorism had been attempted, facilitated or committed.<sup>59</sup>

- 3.16. The story of domestic implementation falls into two parts: before and after the case of *Ahmed*, decided by the Supreme Court in 2010.<sup>60</sup>

### ***The Terrorism Orders***

- 3.17. UNSCR 1373 was originally implemented in the United Kingdom by Orders under the United Nations Act 1946 section 1 [UNA 1946].<sup>61</sup> That section contains a power to make such Orders in Council as appear “*necessary and expedient*” for enabling Resolutions of this kind to be “*effectively applied*”. The Orders are laid before Parliament, though under a procedure which in practice enables Orders to be made by the executive “*without any kind of Parliamentary scrutiny*”.<sup>62</sup>

- 3.18. Structurally, the Terrorism Orders were similar to the current regime under TAFA 2010. Thus, both the Terrorism Orders and TAFA 2010 provided for:

- (a) persons to be ***designated by administrative direction*** from the Treasury, without the need to seek permission from a court;
- (b) a subsequent right of the designated person to have ***recourse to the courts*** to have a designation set aside;
- (c) ***prohibitions*** on dealing with funds and economic resources held or controlled by a designated person, and on making funds, economic resources and financial services available to or for the benefit of a designated person;
- (d) ***penalties*** of up to seven years’ imprisonment for contravening those prohibitions; and
- (e) a power in the Treasury to grant general or specific ***licences*** to exempt acts specified in the licence from those prohibitions.

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<sup>59</sup> *HM Treasury v Ahmed* [2010] UKSC 2: the relevant passages were extracted by Silber J in *Youssef v Secretary of State for Foreign and Commonwealth Affairs* [2011] EWHC 3014 (Admin), paras 29-37.

<sup>60</sup> *Ahmed and others v Her Majesty’s Treasury* [2010] UKSC 2; [2010] 2 AC 534.

<sup>61</sup> Terrorism (United Nations Measures) Order 2001; Terrorism (United Nations Measures) Order 2001 (Amendment) Regulations 2003; Terrorism (United Nations Measures) Order 2006; Terrorism (United Nations Measures) Order 2009 [the **Terrorism Orders**].

<sup>62</sup> *Ahmed*, per Lord Hope at paras 5, 14.

3.19. The most significant differences between the Terrorism Orders and TAFE 2010 relate to the triggers for designation. Thus:

- (a) Under T(UNM)O 2006, designation required the Treasury only to have “**reasonable grounds for suspecting**” that a person “**is or may be**” a person who commits, attempts to commit, participates in or facilitates the commission of acts of terrorism.<sup>63</sup>
- (b) Under T(UNM)O 2009, a second trigger (the “*necessity test*”) was added: the designation had both to satisfy the “*reasonable suspicion*” trigger and to be “**necessary for purposes connected with public protection**”.<sup>64</sup>
- (c) Under TAFE 2010, the second trigger was retained and the first trigger replaced – for final designations – with the tougher test of “**reasonable belief**” that a person “**is or has been involved in terrorist activity**”.<sup>65</sup>

3.20. These changes seem to me to be of considerable practical importance. In particular:

- (a) The reasonable suspicion test in the Terrorism Orders, particularly when combined with “*is or may be*”, as it was in T(UNM)O 2006, cast the net remarkably wide. Read literally, it would allow assets to be frozen on the basis of little more than speculation.<sup>66</sup>
- (b) The substitution in TAFE 2010 of “*reasonable belief*” creates a significantly harder test to satisfy. In the words of the Court of Appeal:

“Belief and suspicion are not the same, though both are less than knowledge. Belief is a state of mind by which a person thinks that X is the case. Suspicion is a state of mind by which the person in question thinks that X may be the case.”<sup>67</sup>

<sup>63</sup> Article 4(2)(a): three alternative conditions (relating to inclusion in the EU list, ownership or control by a designated person and acting on behalf of or on the direction of a designated person) were also subject only to the “*reasonable suspicion*” and “*is or may be*” formulations.

<sup>64</sup> At least three members of the Supreme Court in *Ahmed* considered the introduction of the necessity test to be a “*minor adjustment*”: Judgment, para 28. It may however be seen as an important balance to the formulation “**is or has been involved in terrorist activity**”: without it, there would be no jurisdictional bar to the designation of a former terrorist.

<sup>65</sup> Even the trigger for interim designations was tightened up: “*reasonably suspect*” was retained, but the tenuous “*is or may be*”, described in the Court of Appeal in *Ahmed* as “*on any rational view, a bridge too far*”, was dropped in T(UNM)O 2009 and replaced by “*is or has been*”: TAFE 2010 section 6.

<sup>66</sup> *Ahmed*, Court of Appeal, per Sedley LJ at para 136.

<sup>67</sup> *A and others v Secretary of State for the Home Department* [2004] EWCA Civ, [2005] 1 WLR 414, per Laws LJ at para 229. See to the same effect *Ahmed*, per Lord Brown at para 199: “*to suspect something to be so is by no means to believe it to be so: it is to believe only that it may be so*”.

- (c) The words “*is or has been*” in TAFE 2010 make it explicit for the first time that *past* involvement in terrorism will suffice for the purposes of the first trigger; though the practical importance of that is diminished by the necessity test which implies the need for some future threat.
- (d) The second trigger requires the Treasury to consider that financial restrictions are *necessary* – if not to protect the public, then at least for purposes connected with protecting the public from terrorism. This test is new in asset-freezing legislation (though familiar in relation to control orders).<sup>68</sup> Its significance is considerable, since:
  - (i) it requires a link between the asset freeze and the avoidance of terrorist action somewhere in the world;<sup>69</sup> and
  - (ii) it appears to mean also that the obligations imposed must be no more restrictive than are judged necessary to achieve the preventative object of the restriction.<sup>70</sup>

3.21. Other changes were also made, either in T(UNM)O 2009 or in TAFE 2010, the effect of which was to soften the edges of the asset-freezing regime. Thus:

- (a) T(UNM)O 2009 introduced for the first time a **one-year time limit** on designations. While designations can be renewed any number of times for a further year, the need to do so should serve to concentrate minds and may indeed have been instrumental in the non-renewal of some designations, for example the Northern Irish organizations that were de-designated in 2010.<sup>71</sup>
- (b) T(UNM)O 2009 introduced for the first time a condition of **significant financial benefit** before the making of funds or economic resources for the benefit of a designated person may be penalised.
- (c) TAFE 2010 redrew various prohibitions so as to make **knowledge or reasonable cause to suspect a condition of the offence**.

<sup>68</sup> PTA 2005 section 2(1)(b): “.. *necessary, for purposes connected with protecting the public from a risk of terrorism*”.

<sup>69</sup> “*The public*” includes the public of any country: TAFE 2010 section 2(4); TA 2000 section 1(4)(c).

<sup>70</sup> As in the case of control orders: *Secretary of State for Home Department v MB (FC)* [2007] UKHL 46, per Lord Bingham at paragraph 24.

<sup>71</sup> I recommended a similar “*sunset clause*” in relation to decisions to proscribe organisations under TA 2000 Part II: *Report on the operation in 2010 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006*, July 2011, 4.28-4.35. The ATCSA 2001 asset freezing regime incorporates a two-year sunset clause, apparently non-renewable: section 8.

- (d) TAFE 2010 clarified (following an EU judicial decision) that the payment of **social security benefits** to other household members is not caught by the prohibition on making funds available for the benefit of a designated person.
- (e) TAFE 2010 made provision for **quarterly reports** and for **independent review**.

### The Ahmed case

- 3.22. *HM Treasury v Ahmed* [2010] UKSC 2 was the first set of appeals ever heard by the United Kingdom's Supreme Court. The Court ruled on 28 January 2010 that the Treasury had acted *ultra vires* (beyond its powers) under UNA 1946 in introducing T(UNM)O 2006. The Order went beyond what was "*necessary and expedient*" (in the words of UNA 1946 section 1) to comply with UNSCR 1373. It thus required additional authority from Parliament, in the form of primary legislation.<sup>72</sup>
- 3.23. The Supreme Court commented on the extent of the powers which it was asked to examine. Having reviewed evidence from the five claimants in the case, all of whom have now been delisted at UK level, Lord Hope (with whom Lord Walker and Baroness Hale agreed) stated:

"[T]he restrictions strike at the very heart of the individual's basic right to live his own life as he chooses. .. It is no exaggeration to say .. that designated persons are effectively prisoners of the state. I repeat: their freedom of movement is severely restricted without access to funds or other economic resources, and the effect on both them and their families can be devastating."<sup>73</sup>

In so saying, the Court was not unaware of the licensing system which has the potential significantly to mitigate the impact of an asset freeze.<sup>74</sup>

- 3.24. Of particular concern to the Supreme Court was the ease with which the threshold for designation could be reached. "*Reasonable grounds for suspecting*" that someone "*may be*" involved in terrorism is a low test, and one which is not required by UNSCR 1373, which refers straightforwardly in its preamble to "*acts of terrorism*" and in its main body to persons "*who commit, or attempt to commit, terrorist acts*".<sup>75</sup> By introducing the reasonable suspicion test as a means of giving effect to UNSCR 1373, the Treasury was held to have exceeded its

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<sup>72</sup> The same conclusion was reached in relation to the Al-Qaida and Taliban (United Nations Measures) Order 2006, under which two of the appellants were automatically listed because of their inclusion in the UN list under UNSCR 1267, and appeared to follow also in relation to T(UNM)O 2009, which had replaced T(UNM)O 2006 by the time the case was heard.

<sup>73</sup> Judgment, para 60.

<sup>74</sup> Judgment, paras 38-39.

<sup>75</sup> Judgment, para 58.

powers. This was described as “a clear example of an attempt to adversely affect the basic rights of the citizen without the clear authority of Parliament”.<sup>76</sup>

- 3.25. The Supreme Court provided no answer to a distinct question: whether the requirements of T(UNM)O 2006 were incompatible with the European Convention on Human Rights [ECHR], as given effect in the UK by the Human Rights Act 1998. The preliminary view of three Justices was that no such incompatibility existed;<sup>77</sup> the other four preferred to express no view.<sup>78</sup>

### **The Terrorist Asset Freezing (Temporary Provisions) Act 2010**

- 3.26. The Supreme Court refused on 4 February 2010 to postpone the application of its quashing order, which required the Government to move fast if sanctions were to remain in place. The Terrorist Asset-Freezing (Temporary Provisions) Bill was introduced the following day, and the Act [TAF(TP)A 2010] passed into law five days later. It deemed the implementing Orders, and action taken under them, to be valid from 4 February until 31 December 2010, leaving time for a permanent legislative solution to be found.

### **The Terrorist Asset Freezing Bill**

- 3.27. The Terrorist Asset Freezing Bill was published in draft on 5 February 2010, the same day as the Temporary Provisions Bill was introduced into Parliament. A public consultation on the content of Part 1 of the Bill was launched on 18 March. The consultation closed on 18 June 2010, and the Government’s response to the consultation replies was published on 15 July 2010. The Bill had its second reading in the House of Lords on 27 July 2010 and in the House of Commons on 15 November 2010. It passed into law on 16 December 2010, and Part 1 entered into force on the following day.
- 3.28. The debates on the Bill were informed by a report of the House of Lords Select Committee on the Constitution, published on 22 July 2010,<sup>79</sup> and in their latter stages by two Reports of the Joint Committee on Human Rights, published on 22 October and 12 November 2010.<sup>80</sup> The depth and thoroughness of the debates, particularly in the House of Lords, compares favourably to the rushed timetable

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<sup>76</sup> Judgment, para 61.

<sup>77</sup> Lord Mance at para 235, concurred in by Lord Phillips at para 144; and cf. Lord Brown at para 201.

<sup>78</sup> Lord Hope (with whom Lord Walker and Baroness Hale agreed) at para 62; Lord Rodger.

<sup>79</sup> HL Paper 25.

<sup>80</sup> HL Paper 41, HC 535 (19 October); HL Paper 53, HC 598 (12 November).

and consequently rather perfunctory parliamentary discussion of the asset-freezing and financial restriction provisions of ATCSA 2001 and CTA 2008.<sup>81</sup>

3.29. Among the issues debated during the legislative procedure were:

- (a) **The trigger for designation:** consideration was given to requiring involvement in terrorism to be proved to the civil or even the criminal standard, and to requiring that the possibility of prosecution be explicitly addressed prior to an asset-freeze being imposed on an individual who has not yet entered the criminal justice system. The solution eventually reached was that an interim designation can be made on the basis of reasonable suspicion of involvement in terrorism, but (after amendment to the Bill in Committee) that a final designation requires reasonable belief. The necessity test was retained as an additional trigger.
- (b) **Access to court:** the case for requiring prior judicial authorisation of asset freezes (as for control orders) was urged during debates, but rejected. The decision to designate accordingly remains for the executive, as I understand to be the case in Australia, New Zealand, Canada, the USA and Germany (but not in Ireland or France). The Bill was however amended in Committee so as to provide expressly that challenges to both interim and final designations can be made by way of full appeal rather than by way of judicial review.
- (c) **Right to a fair hearing:** it was accepted on all sides that the right of appeal required the retention of a closed material procedure, with special advocates who were entitled to see and to make submissions on closed material but not to take instructions on it from the designated person. Debate centred on whether the Act should contain an express requirement that sufficient information be given to the designated person to enable effective instructions to be given to his own advocate ("*gisting*", as required in relation to some control orders by the judicial House of Lords).<sup>82</sup> No such requirement was inserted into the Bill; but the issue, together with others relating to the role of special advocates, is currently the subject of consultation.<sup>83</sup>

3.30. The first two of those issues resulted in what the Government has in other contexts referred to as "*a correction in favour of liberty*".<sup>84</sup> Particularly significant was the change to the most controversial feature of the Terrorism Orders – the

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<sup>81</sup> Both have been cited to House of Lords Constitution Committee as examples of low quality fast-track legislation: "Fast-Track Legislation: Constitutional Implications and Safeguards", 15<sup>th</sup> report of 2008-09, paras 77-80, 97.

<sup>82</sup> *Secretary of State for the Home Department v AF (No. 3)* [2009] UKHL 28.

<sup>83</sup> Justice and Security Green Paper, CM 8194, October 2011.

<sup>84</sup> Review of Counter-Terrorism and Security Powers, Terms of Reference (OSCT), 29 July 2010.

reasonable suspicion trigger for final designations – and its replacement by a test (found also in the Canadian and New Zealand laws implementing UNSCR 1373) of reasonable belief.<sup>85</sup> Although some persons may have been delisted in consequence of the change, it has not been suggested to me that potentially dangerous assets have gone unfrozen as a consequence. The same, I suspect, could have been said had Parliament gone further, and adopted the suggestion of a requirement that the Minister be satisfied on the balance of probabilities that a designated person is or has been involved in terrorism.

- 3.31. This change had the further benefit of strengthening the Government's case that the Bill which became TAFE 2010 was compatible with the ECHR.<sup>86</sup>

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<sup>85</sup> Terrorism Suppression Act 2002 (New Zealand); UN Suppression of Terrorism Regulations 2001 (Canada). Under Australian law (Suppression of the Financing of Terrorism Act 2002), the Minister must be satisfied that the person "is" involved in terrorism. See further *Ahmed*, per Lord Brown at para 199.

<sup>86</sup> As the Minister declared to Parliament pursuant to Human Rights Act 1998 section 19(1)(a).

#### 4. CONTENTS OF THE ACT

- 4.1. The 47 sections of TAFE 2010 Part 1 are clearly expressed and accurately described in the Explanatory Note. What follows is no more than a brief summary of the principal provisions.

##### **Designated persons (sections 2-10)**

- 4.2. The financial restrictions in Part 1 apply to “*designated persons*”. Persons are designated:

- (a) On the initiative of the Treasury (section 1(a)); or
- (b) As an automatic consequence of appearing on the EU list (section 1(b)).

- 4.3. Sections 2-10 concern the power of the Treasury to designate. Two types of designation are possible: final and interim.

- 4.4. The Treasury may make a final designation (section 2) when:

- (a) they reasonably *believe* that a person is or has been involved in terrorist activity, as broadly defined by section 2 and by TA 2000 section 1 (“*the reasonable belief test*”),<sup>87</sup> and
- (b) they consider that it is necessary for purposes connected with protecting members of the public from terrorism that financial restrictions should be applied in relation to that person (“*the necessity test*”).

- 4.5. The Treasury may make an interim designation (section 6) when:

- (a) they reasonably *suspect* that a person is or has been involved in terrorist activity (“*the reasonable suspicion test*”); and
- (c) the necessity test is satisfied.

- 4.6. The duration of a final designation is limited to one year. It may be renewed for an unlimited number of further one-year periods, but only if the reasonable belief test and necessity for public protection test continue to be satisfied.<sup>88</sup> An interim designation lasts for 30 days or until replaced by a final designation, whichever is earlier.<sup>89</sup>

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<sup>87</sup> Or is owned or controlled by, or acting on behalf of or at the direction of such a person: TAFE 2010 section 2(1)(a)(ii)(iii).

<sup>88</sup> TAFE 2010 section 4.

<sup>89</sup> *Ibid.*, section 8.



- 4.7. The making of both interim and final designations must be accompanied in all cases by written notice to the designated person and by the taking of steps to publicise the designation. Steps must be taken to publicise the designation “*generally*” unless the designated person is believed to be under 18, or if it is considered that disclosure should be restricted in the interests of national security, for reasons connected with the prevention or detection of serious crime or in the interests of justice.<sup>90</sup> In those circumstances, the persons to whom a designation is disclosed may be placed under a duty of confidentiality, enforceable by criminal sanctions.<sup>91</sup>

#### **Prohibitions in relation to designated persons (sections 11-16, 18)**

- 4.8. Five prohibitions are imposed, by TAFE 2010 sections 11-15, in relation to designated persons. These are, in summary:

- (a) **Freezing of funds and economic resources:** it is an offence under section 11 to deal with funds or economic resources owned, held or controlled by a designated person. Funds are broadly defined in section 39(1) as extending to financial assets and benefits of every kind, and economic resources are defined in section 39(2) as assets of every kind which are not funds but can be used to obtain funds, goods or services.
- (b) **Making funds or financial services available to a designated person:** it is an offence under section 12 to make funds or financial services (including, by section 40(1), insurance services and banking services) available to a designated person.
- (c) **Making funds or financial services available for the benefit of a designated person:** it is an offence under section 13 to make funds or financial services available to any person for the benefit of a designated person.
- (d) **Making economic resources available to a designated person:** it is an offence under section 14 to make economic resources available to a designated person.
- (e) **Making economic resources available for the benefit of a designated person:** it is an offence under section 15 to make economic resources available to any person for the benefit of a designated person.

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<sup>90</sup> TAFE 2010 sections 3, 7.

<sup>91</sup> TAFE 2010 section 10.

The *mens rea* for each of those offences is knowledge or reasonable cause for suspicion on the part of the defendant of the connection with a designated person. In the case of the section 14 offence, there must also be knowledge or reasonable cause to suspect that the designated person would be likely to exchange the economic resources, or use them in exchange, for funds, goods or services. Their collective purpose is not only to freeze funds owned by designated persons, but to prevent those persons from acting as “*fund-raisers or intermediaries between donors on the one hand and those planning terrorist attacks on the other*”.<sup>92</sup>

- 4.9. Section 16 contains some specific exceptions to the prohibitions in sections 11-13 (e.g. the payment of interest on a frozen account, and, importantly, the making of a social security payment to a family member).<sup>93</sup> Section 18 makes it an offence intentionally to participate in activities knowing that their object or effect is to circumvent the prohibitions in sections 11-15, or to enable or facilitate the contravention of any such prohibition.
- 4.10. The offences created by sections 11-15 and 18 carry a maximum sentence after conviction on indictment of seven years’ imprisonment. Lesser offences such as disclosure of confidential information (section 10) and providing false information for the purposes of obtaining a licence (section 17) are punishable by up to two years in prison.<sup>94</sup> UK nationals and bodies may commit all these offences by conduct wholly or partly outside the United Kingdom.<sup>95</sup>

### **Licences (section 17)**

- 4.11. Section 17 states that the prohibitions in sections 11-15 do not apply to anything done under the authority of a licence granted by the Treasury. A licence is a written authorisation to exempt from the scope of an asset freeze activity that would otherwise be prohibited: in particular,
- (a) making funds, economic resources or financial services available to a designated person; or
  - (b) allowing a designated person access to funds to meet everyday expenses.

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<sup>92</sup> HM Treasury, *Public consultation: draft terrorist asset-freezing bill*, CM 7852, March 2010, para 4.9.

<sup>93</sup> The latter as a consequence of Case C-340/08 R (*M and others*) v *HM Treasury* [2010] ECR I-3913: see further 7.2 below.

<sup>94</sup> TAFE 2010 section 32.

<sup>95</sup> TAFE 2010 section 33.

- 4.12. Licences may be general, or granted to a category of persons or to a particular person. They may include conditions (e.g. reporting requirements). They may be of indefinite duration or subject to an expiry date.

#### **Information (sections 19-25)**

- 4.13. Section 19 requires relevant institutions (as defined in section 41 by reference to the Financial Services and Markets Act 2000) to inform the Treasury as soon as practicable if in the course of their business they know or have reasonable cause to suspect that a person is a designated person or has committed an offence under TAFA 2010 Chapter 2. Sections 20 and 21 give the Treasury power to request information and documents from designated persons.
- 4.14. Non-compliance with the obligations imposed by these sections is punishable under section 32 by up to 51 weeks' imprisonment in England and Wales (six months in Scotland and Northern Ireland). Section 23 empowers the Treasury to disclose any information obtained by them in exercise of their powers under Part 1 to a variety of recipients including police officers, Government officials, the UN and the EU.

#### **Appeals and reviews (sections 26-29)**

- 4.15. Appeal lies to the High Court or Court of Session against any decision of the Treasury to make or vary an interim or final designation, to renew a final designation or not to vary or revoke an interim or final designation.<sup>96</sup> Other Treasury decisions (including those relating to licence conditions) are subject to review on judicial review principles.<sup>97</sup> EU listings are not subject to appeal or review under TAFA 2010, but may be challenged before the General Court of the EU.<sup>98</sup>
- 4.16. In an attempt to reconcile the interests of a fair trial with those of national security, the Act provides for a closed material procedure, similar to those which exist in relation to proscription appeals, control order appeals and some other national security related proceedings. A person wishing to challenge his designation and in respect of whom the reasons are said to be confidential in the interests of national security may thus have the full reasons for that designation made known to a special advocate who is tasked with defending his interests, but unable to take instructions from him. The provisions of CTA 2008 relating to rules of court and special advocates apply to appeals and reviews under TAFA 2010.<sup>99</sup>

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<sup>96</sup> TAFA 2010 section 26.

<sup>97</sup> TAFA 2010 section 27.

<sup>98</sup> Treaty on the Functioning of the European Union, Article 263.

<sup>99</sup> TAFA 2010 section 28(4).

- 4.17. The procedure for appeals under TAFE 2010 to the High Court, and for any further appeal to the Court of Appeal, were set out by the Lord Chancellor for England and Wales in Rules of Court amending Part 79 of the Civil Procedure Rules 1998.<sup>100</sup> These rules provide that the civil litigation “*overriding objective*” of “*enabling the court to deal with cases justly*” must be read and given effect in a way which is compatible with the court’s duty to ensure that information is not disclosed contrary to the public interest – a frank acknowledgment that the interests of national security and of justice are not completely reconcilable.

#### **Quarterly reports (section 30)**

- 4.18. Provision is made by TAFE 2010 section 30 for quarterly reports to be made by the Treasury on the operation of Part 1, continuing a practice that existed also under the predecessor legislation to TAFE 2010. The first of those reports covered the period 17 December 2010 to 31 March 2011. The second and third reports covered the periods April to June 2011 and July to September 2011. Each report is combined with an equivalent report on the UK implementation of the UN Al-Qaida asset-freezing regime under AQTA 2010.
- 4.19. At **Annexes 1-4** to this Report, I append those three reports, preceded by the last of the Treasury’s quarterly reports on the operation of the previous regime (October to December 2010).
- 4.20. There is a noticeable contrast between these reports and the equivalent quarterly reports on the exercise of control order powers, placed before Parliament by the Home Secretary pursuant to an identical statutory obligation.<sup>101</sup> As to these:
- (a) The initial reports produced under the PTA 2005 were as exiguous as the TAFE 2010 reports are now.<sup>102</sup>
  - (b) In response to a request for guidance from the then Home Secretary, Rt Hon Dr John Reid MP, my predecessor Lord Carlile of Berriew QC stated in a special report dated 11 December 2006 that “*there would be benefit if [the reports] were somewhat more informative than the statistical but otherwise minimal formula currently in use*”, and made some recommendations.
  - (c) Those recommendations were broadly accepted. By way of illustration, the most recent quarterly report on control orders<sup>103</sup> – though still only two or

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<sup>100</sup> The Civil Procedure (Amendment No. 4) Rules 2010, 2010 No. 3038 (L.20), 23 December 2010; cf. The Rules of Court of Judicature (Northern Ireland) (Amendment No. 3) 2010

<sup>101</sup> Under PTA 2005 section 14(1); reports available on the Home Office website.

<sup>102</sup> One of those reports is annexed to Lord Carlile’s Special Report of 11 December 2006.

<sup>103</sup> *Control Order Powers (11<sup>th</sup> June 2011 – 10<sup>th</sup> September 2011)*.

three pages long – informs the reader of the number of control orders in existence during the period, the numbers made, revoked, renewed and modified, a breakdown of controlees by nationality (UK / non-UK) and residence (London or outside), the numbers of subjects charged with breach, the numbers of appeals lodged under different provisions of the Act and summaries of rulings handed down by the courts in those appeals. There is also a description of the review procedure, including the numbers of Review Group meetings held during the period under review, and an update on the anticipated future of the control order regime.

I return to this theme in my conclusions (10.23) and recommendations (11.6), below.

## 5. PERSONS DESIGNATED

- 5.1. Designated persons are placed by TAFE 2010 into two categories:
- (a) those designated by the Treasury (section 1(a)); and
  - (b) those included on the EU list provided for by Regulation 2580/2001 (section 1(b)).
- 5.2. This report concerns the operation of TAFE 2010, rather than the equivalent processes for listing and delisting under EU law. Nonetheless, because those appearing on the EU list are subject to the other provisions of the Act, I begin by summarising who they are.

### Persons on the EU list

- 5.3. The EU list provided for by Article 2(3) of Regulation 2580/2001 is both accessible and clear. A copy of the current EU list, as it stood at the end of the review period, is at **Annex 5** to this report. That list is published in the Official Journal of the EU, freely available to all through the [www.europa.eu](http://www.europa.eu) website.
- 5.4. The list is contained in an Annex to a separate Council instrument.<sup>104</sup> A new instrument is adopted every time the list is updated.<sup>105</sup> In the period of almost 10 years that has elapsed since the promulgation of the initial list,<sup>106</sup> the list has been updated 27 times.<sup>107</sup>
- 5.5. The EU list, as it stood at the end of the review period, comprised 22 individuals and 25 groups / entities. It does not, of course, purport to be a complete list of terrorists with assets in the EU. In particular, it does not include:
- (a) persons designated under the UN Al-Qaida and Taliban asset-freezing regime, established under UNSCR 1267 and implemented by Council Regulation 881/2002 and AQTAFR 2010;<sup>108</sup>
  - (b) persons whose activities do not have a cross-border dimension, who for that reason are ineligible for EU listing; or

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<sup>104</sup> At the end of the review period, Council Implementing Regulation (EU) No. 687/2011 of 18 July 2011. One name has since been deleted and five added by Council Implementing Regulation (EU) No. 1063/2011 of 21 October 2011.

<sup>105</sup> Since the entry into force of the Lisbon Treaty on 1 December 2009, the instruments have been Council Implementing Regulations. Prior to that, they were Council Decisions.

<sup>106</sup> In Council Decision 2001/927/EC of 27 December 2001.

<sup>107</sup> A list of the amending instruments is on the Treasury website: [www.hm-treasury.gov.uk/fin\\_sanctions\\_terrorist.htm](http://www.hm-treasury.gov.uk/fin_sanctions_terrorist.htm).

<sup>108</sup> As noted in Regulation 2580/2001, 15<sup>th</sup> recital.

(c) persons listed nationally (e.g. under TAFSA 2010 in the United Kingdom) whom the Member State concerned has decided not to refer for EU listing.<sup>109</sup>

5.6. Each individual listing is accompanied by some basic personal details. These fall well short of constituting full reasons for the listing, sufficient for the person concerned to know the gist of the case against them; but they do serve both to distinguish that person from others with the same name, and to give any affiliations material to the listing.

5.7. On the basis of these short descriptions, it may be seen that:

(a) 15 of the 22 individuals listed were born in Algeria, and are listed for their membership of the jihadist groups al-Takfir and al-Hijra.

(b) A further three are listed for their membership of the Dutch Islamist Hofstadgroep.

(c) The remaining four consist of two born in Saudi Arabia, one in Lebanon and one in Pakistan (Khaled Shaikh Mohammed, the alleged principal architect of the 9/11 attacks, currently facing military trial at Guantanamo).

The pronounced bias towards Algerians and members of a Dutch Islamist group may be assumed to reflect the fact that some states have made more vigorous use than others of the opportunity to translate decisions of their competent authorities (whether to freeze assets, proscribe, prosecute or otherwise). By the end of the review period, it had been several years since the United Kingdom proposed anyone for addition to the EU list: though subsequently, in October 2011, five men of Iranian origin were added to the EU list on the basis of a very recent designation under TAFSA 2010.

5.8. The groups and entities, unlike the individuals, have origins extending well beyond North Africa and the Middle East. They include the International Sikh Youth Federation, the LTTE (Tamil Tigers), the Communist Party of the Philippines, FARC (Colombia) and the Shining Path (Peru). Other terrorist groups on the list include Hamas, the Kashmiri group Hizbul Mujahideen, two Kurdish groups, Palestinian Islamic Jihad and the Egyptian Islamist movement Gama'a al-Islamiyya. Several of the groups were listed on the basis of a UK decision. The principal Islamist terrorist groups such as Al-Qaida, Lashkar e Tayyaba and al-Muhajiroun are listed not under Regulation 2580/2001 but pursuant to the Al-Qaida and Taliban regime or (in the case of al-Shabaab in Somalia) a country sanctions regime.

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<sup>109</sup> For example, because the designated person is not thought to have assets or potential assets elsewhere, or because the designating state is unwilling or unable to share its intelligence on that person.

## **Persons designated by the Treasury**

### ***Evolution of the list***

- 5.9. The number of Treasury designations under the Terrorism Orders, and now TAFE 2010, has been in steep decline. Thus:
- (a) There were 162 such designations at the start of 2008 and 149 at the start of 2009 (95 individuals and 54 entities).
  - (b) By the start of the period under review in December 2010, there were just 57 Treasury designations.
  - (c) By the end of that period in September 2011, this number had shrunk to 38 – all of them inherited from the pre-Act regime. The list then remained unchanged throughout the review period, the first new designations under the Act occurring only in October 2011.
- 5.10. The major cause of this decline was not a re-assessment of the circumstances of the persons designated, but rather the two-stage implementation of a policy whereby persons who were already subject to UN or EU asset freezes were no longer subject to duplicate Treasury designations, save where this was necessary to support an EU asset freeze. Pursuant to this policy, a large number of overseas individuals did not have their designations renewed when they expired on 31 August 2010.<sup>110</sup> There was a further pruning of the list during the period under review, between January and March 2011, under cover of transitional provisions which extended the effect of final designations under T(UNM)O 2009 until three months after the entry into force of TAFE 2010 Part 1.<sup>111</sup>

### ***Designations allowed to lapse***

- 5.11. Of the 19 individuals and bodies whose designations were allowed to lapse (or who in short-hand were delisted) in the January-March 2011 review:
- (a) Four were delisted because they were judged on an individual basis not to meet the reasonable belief test or, if they met that test, no longer met the necessity test for designation under TAFE 2010. These were Assad Barakat (a Lebanese living in Paraguay), Aabid Khan (a UK national sentenced to 12 years in 2008 for possessing material useful for terrorism), Elehssan, a charitable organisation operating in Gaza and the West Bank and Aum

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<sup>110</sup> Treasury General Notice of 1 September 2010.

<sup>111</sup> TAFE 2010 sections 46(5)-(8).



Shinrikyo, the organisation best known for the 1995 Tokyo sarin gas attacks.<sup>112</sup>

(b) 15 were delisted so as to avoid duplication with UN or EU listings which arguably rendered the Treasury listings unnecessary (and the necessity test unsatisfied). Of these:

(1) Three individuals and five entities remained subject to the Taliban and Al-Qaida asset-freezing regime under UNSCR 1267 and Council Regulation 881/2002.

(2) Eight entities, including Hamas, the International Sikh Youth Federation, the Kurdistan Workers' Party and the Liberation Tigers of Tamil Eelam, were subject to the EU terrorist asset-freezing regime pursuant to UNSCR 1373 and Council Regulation 2580/2001 (rendering them "*designated persons*" for the purposes of TAFE 2010 section 1(b), even after delisting by the Treasury).<sup>113</sup>

5.12. A further twist to this complex tale is that not every designation that duplicated an EU listing was allowed to lapse in the 2011 review. That is because listing under Council Regulation 2580/2001 itself depends upon a prior decision by a competent authority in a Member State. Where the only prior decision relied upon was designation by the Treasury under the Terrorism Orders, allowing a Treasury designation to lapse would have resulted in the EU listing falling away. For this reason, the Treasury maintained the designation of those individuals and entities for which that designation was the sole basis of an EU listing, including six of the eight entities that remain designated under TAFE 2010.

### ***Designation replaced***

5.13. The designation of the Hizballah External Security Organisation [**ESO**] was revoked and replaced in March 2011 with a new final designation of the military wing of Hizballah, which includes the ESO, in order to capture other elements of the military wing and bring the asset freeze in line with the proscription.<sup>114</sup>

### ***Currently listed individuals and entities***

5.14. The Treasury list under TAFE 2010 (comprising 30 individuals and eight entities at the end of the review period) is not as accessible as its counterpart under the EU Regulation 2580/2001. There are, it is true, two ways of putting such a list together from open sources:

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<sup>112</sup> Treasury General Notice of 17 March 2011, Annex C.

<sup>113</sup> *Ibid.*, Annex B.

<sup>114</sup> Treasury's first quarterly report under TAFE 2010 section 30 (Annex 2 to this Report).

- (a) piecing them together from the annexes to a series of General Notices of Final Designations on the Treasury's website, dated 10 March (10 individuals), 11 March (4 individuals), 16 March (1 individual in each of two notices) and 17 March (Annex A: 14 individuals and eight entities); or
  - (b) taking the Consolidated List of those designated for all types of sanction from the Treasury website, and extracting the names which can be seen from the spreadsheet to have been designated under TAFSA 2010.
- 5.15. Neither of these methods is however straightforward. For the purposes of this report, I have asked the Treasury to put together a simple list of those whom it has designated under TAFSA 2010 at the end of the period under review, together with the accompanying detail that is to be found in the General Notices. That list is at **Annex 6** to this report. I return to this subject in my conclusions (10.22) and recommendations (11.5), below.
- 5.16. The persons and bodies designated at the end of the review period can be divided into four distinct categories:
- (a) Convicted persons in the UK: 18
  - (b) Non-convicted persons in the UK: 2
  - (c) Persons overseas: 10
  - (d) Entities based overseas: 8
- All the designated individuals are male.
- 5.17. I elaborate in respect of each of these groups as follows, giving in respect of each individual only such information as is already in the public domain.

Convicted persons in the UK

- 5.18. 18 designated persons were convicted in the UK of terrorist offences, on dates between 2007 and 2010. The majority were sentenced to life imprisonment, and the remainder to terms of between 7 and 10 years. Of the 18 convicted, one (Sultan Muhammad) was released in June 2010, one (Zahoor Iqbal) in June 2011 and one (Habib Ahmed) in September 2011. The other 15 remain in prison.

5.19. 246 people have been convicted of terrorism-related offences in the UK since September 2001.<sup>115</sup> The 18 men who are designated under TAFSA 2010 have mostly been associated with the best-known and most serious of the plots. Thus:

- (a) Four of the men (Ramzi Mohammed, Yassin Omar, Hussein Osman and Muktar Mohammed Said) participated in the failed London attacks of 21 July 2005, in which devices failed to explode on three underground trains and a bus. All were designated at the time of their arrest, and subsequently convicted of conspiracy to murder and sentenced to life imprisonment in July 2007.
- (b) Nine of the men were involved in the airline liquid bomb plot that was intercepted in August 2006 (Operation Overt) and led to three criminal trials.<sup>116</sup> All had their assets frozen under T(UNM)O 2001 on the day after their arrest.
- (c) Two of the men (Parviz Khan and Zahoor Iqbal) were convicted in January 2008 of conduct facilitating terrorism: Khan also pleaded guilty to involvement in the 2007 Birmingham plot to kidnap and execute a British Muslim soldier (Operation Gamble).
- (d) Bilal Talal Abdullah is the survivor of the two men who drove a Jeep into the terminal of Glasgow International Airport on 30 June 2007, packed with the same mixture of fuel and gas cylinders as was found in two vehicle-borne devices in London on the previous day (Operation Seagram). He was originally designated under T(UNM)O 2006 in July 2007, and sentenced to two terms of life imprisonment in December 2008.

In addition, Habib Ahmed was convicted in 2008 of various offences under TA 2000, including membership of Al-Qaida and possession of a document containing details of how to make improvised explosive device; and Sultan Muhammad – originally designated in December 2006 under T(UNM)O 2006 – was convicted in 2008 of possessing extensive material for use in terrorism.

5.20. The plots that prompted most of these designations are relatively high profile, prompting the question whether asset freezes are more likely to be considered in such cases. It also points up the need to keep asset freezes under careful review: the fact that they pass the necessity test at the time of arrest does not mean that they necessarily continue to pass it once the subject is behind bars. I

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<sup>115</sup> Home Office Statistical Bulletin 15/11, 13 October 2011.

<sup>116</sup> Abdula Ali, Assad Ali Sarwar, Tanvir Hussain, Umar Islam (all convicted after the first Overt trial in September 2009); Adam Khatib and Nabeel Hussain (both convicted after the second Overt trial in December 2009); and Ibrahim Savant, Waheed Zaman and Waheed Arafat Khan (all convicted after a retrial in July 2010).

return to this subject in my conclusions (10.12-10.14) and recommendations (11.1), below.

#### Non-convicted persons in the UK

- 5.21. Two persons resident in the UK were subject to asset freezes during the review period, despite never having been convicted of a terrorist offence. Ismail Bhuta is a British citizen, 67 years old, born in Gujerat and resident in London. Zana Rahim is an Iraqi Kurd in his late 20s.
- 5.22. In both cases, they were first designated in 2009, under the various measures that have been in force since then.<sup>117</sup> Appeals by both men against their designation were brought before the High Court, though neither had progressed very far. Ismail Bhuta was delisted on 29 November 2011.

#### Persons outside the UK

- 5.23. Ten individuals outside the UK feature on the Treasury list, only one of whom (Gulam Mastafa) is a UK passport holder.
- (a) Four individuals (Imad Khalil al-Alami, Usama Hamdan, Musa Abu Marzouk and Khalid Mishaal) are described in their public listings as senior Hamas officials. They have been designated since 2004.
- (b) Three individuals (Hassan Izz-al-Din, Abdelkarim Hussein Mohamed al-Nasser and Ibrahim Salih Mohammed al-Yacoub) have been said to be linked with Hizballah. Each has been indicted in his absence by the US authorities: Izz-al-Din for the hijacking of TWA flight 847 in 1985, and al-Nasser and al-Yacoub for the Khobar Towers (Saudi) bomb attack in 1996, which killed 19 US service personnel and wounded 372 other Americans. They have been designated since 2001.
- (c) Khalid Shaikh Mohammed, currently detained in Guantanamo, is a senior member of Al-Qaida who is widely believed to have masterminded, financed and participated in the 9/11 terrorist attacks. He has been designated since 2001.
- (d) Gulam Mastafa was first designated in April 2007, and was subsequently imprisoned twice in Bangladesh for firearms offences and on terrorism-related charges.
- (e) Selman Bozkur is a Turkish national, first designated in January 2008.

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<sup>117</sup> T(UNM)O 2006, T(UNM)O 2009, the Terrorist Asset-Freezing (Temporary Provisions) Act and now TAFA 2010.

The individuals listed at (b) and (c) are the only individuals designated by the Treasury also to feature on the EU list: that is because their Treasury listing forms the basis for the EU listing.

- 5.24. It is not a condition of designation that a person must be believed to have assets in the United Kingdom, and it should not be assumed that all the men in this group do. None of them has appealed against his designation.

#### Entities

- 5.25. Each of the eight designated entities is based overseas. There is the following degree of overlap with other lists:

(a) Two of the eight designated entities (Hizballah Military Wing and ETA) are also proscribed organisations pursuant to Part 2 of the Terrorism Act 2000.<sup>118</sup>

(b) The other designated entities (i.e. all except Hizballah Military Wing and ETA), feature also on the EU list. That is because in each of the six cases the UK designation is the competent authority decision that forms a basis for the EU listing. Entities whose EU listing is not dependent on the act of a UK competent authority (e.g. PKK) are not designated by the Treasury: they remain designated under TAFE 2010 by virtue of section 1(b).

- 5.26. Summarising the designated groups, in outline:

(a) ELN and FARC are violent Marxist guerilla organisations, established in the mid-1960s, that aim to overthrow the Colombian government and pursue a communist revolution in Columbia. They have been designated in the UK since 2001, and on the EU list since 2002 (FARC) and 2004 (ELN).

(b) ETA, founded in 1959, is part of the Basque National Liberation Movement and a Marxist-Leninist paramilitary group with the goal of gaining independence for the Greater Basque Country. It claimed responsibility for over 30 terrorist attacks in Spain between June 2007 and August 2009, but declared a ceasefire in September 2010 and “*a permanent cessation of activity*” in October 2011. It has been designated in the UK since 2001.

(c) Hizballah is a Lebanon-based Shia group, supported by Iran and Syria, whose political wing forms part of the government of Lebanon but whose military wing has been accused of multiple attacks, including against US and Israeli targets. A previous designation of Hizballah External Security

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<sup>118</sup> See TA 2000 Schedule 2.

Organisation dates back to 2001; it was replaced by the broader designation of Hizballah's military wing, which is also a proscribed organisation, in 2011.

- (d) HLF (Holy Land Foundation for Relief and Development) is a US charity that was designated by the US Office of Foreign Assets Control in 2001 and, together with its officers, convicted in the US in 2008 of providing material support to Hamas. It has been designated in the UK since 2001.
- (e) PLFP (Popular Front for the Liberation of Palestine) and PLFP-GC (Popular Front for the Liberation of Palestine – General Command) are Palestinian groups involved in terrorist activities against Israeli and Arab targets including hijackings, assassinations, suicide bombings and rocket attacks. Each has been designated in the UK since 2001.
- (f) Shining Path (Sendero Luminoso) is a Peruvian Maoist group, formed in the late 1960s, that aims to overthrow the Peruvian Government. It was said by the Peruvian Truth and Reconciliation Commission to have been responsible for more than 30,000 deaths between 1980 and 2000. It has been designated in the UK since 2001.

5.27. Two facts about the list of designated entities strike me with particular force:

- (a) It contains not a single Northern Ireland based entity. The designation of six such entities, from both sides of the sectarian divide,<sup>119</sup> was allowed to lapse with effect from 31 August 2010, prior to the entry into force of TAFE 2010. The contrast with the position in relation to proscription – where the same 14 Northern Ireland related groups have been proscribed without alteration since the last century – is instructive.<sup>120</sup>
- (b) Each of the eight entities that remains on the list has been on it since 2001.<sup>121</sup> No entity currently on the list has been designated, in other words, since the initial surge in activity immediately after 9/11.

Whilst the designations of entities on the list have been regularly renewed, these facts would suggest (outside the field of Al-Qaida) that asset freezing is not seen

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<sup>119</sup> Continuity IRA, Loyalist Volunteer Force, Orange Volunteers, Real IRA, Red Hand Defenders, Ulster Defence Association: see Treasury General Notice of 1 September 2010.

<sup>120</sup> I have previously recommended that all proscriptions should expire after a set period, subject to renewal by the agreement of Parliament, and that the absence of an organisation said to be concerned in Northern Ireland-related terrorism from the relatively short list of “*specified organisations*” under the Northern Ireland (Sentencing) Act 1998 should be given particular weight when the proscription of such an organisation is reviewed: *Report on the operation in 2010 of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006*, July 2011, paras 4.34-4.36, available from <http://terrorismlegislationreviewer.independent.gov.uk>

<sup>121</sup> Though as noted above, the designation of Hizballah External Security Organisation was replaced in 2011 by the designation of the military wing of Hizballah.

as a front-line weapon where new entities are concerned. Indeed proscription has tended to be preferred over the past 10 years or so.

**Quantity of assets frozen**

5.28. The number of accounts and approximate amount of assets frozen under the TAFE 2010 regime is given in the Treasury’s quarterly reports to Parliament.<sup>122</sup> The figures given in those reports (which, I am told, include the assets of those listed under Regulation 2580/2001 and come under the TAFE 2010 regime by virtue of section 1(b)) are as follows:

DATE	ACCOUNTS	ASSETS
31 December 2010	91	£140,000
31 March 2011	85	£120,000
30 June 2011	85	£120,000
30 September 2011	84	£100,000

5.29. Three comments may be made on these figures: they are remarkably small; they show a gentle decline over the period; and they were affected relatively little by the lapsing of 19 designations in March 2011, suggesting that many of the individuals and/or entities designated under the Act had few if any assets within the jurisdiction.

5.30. By the end of the period under review, similar sums, in fewer accounts, were frozen under the Al-Qaida asset freezing regime. The Treasury’s quarterly reports (**Annexes 1-4**) reveal that “41 accounts containing just over £100,000” were frozen in the UK under that regime, as of 30 September 2011, down from “83 accounts containing just under £110,000” as of 31 March 2011.

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<sup>122</sup> See **Annexes 1-4** to this Report.

## 6. THE REVIEW OF DESIGNATIONS

- 6.1. It is not my function to second-guess decisions taken by Ministers as regards the designation or delisting of particular individuals or entities.
- 6.2. Having reviewed the relevant files and spoken to some of those involved, I would however record the following observations on the manner in which the system operated during the period under review.

### **The annual review process**

- 6.3. The initial reviews conducted between January and March 2011 were required in order to determine whether designations should be renewed pursuant to TAFE 2010 section 46(8). Unless renewed, designations under T(UNM)O 2009 lapsed automatically on 17 March 2011.
- 6.4. A timetable of only three months to review all 58 designated individuals and entities was a challenging one. Sensibly, the Treasury is extending the review season in 2011-12 to six months (October to March). The eventual aim is to stagger the annual reviews throughout the year, while continuing to conduct additional reviews if there is a significant change in the circumstances of the designated person.
- 6.5. The process for review is, broadly, as follows:
  - (a) Designated persons are asked for written submissions on whether they should remain designated.
  - (b) Treasury discuss with the police and interested departments and agencies.
  - (c) A submission is prepared for the Minister, who will generally but not invariably follow the recommendation of his civil servants.
  - (d) A letter with brief reasons for the decision is sent to the designated person.
  - (e) The outcome of the review is published in a Treasury General Notice, and the consolidated notice on the Treasury's website is updated.<sup>123</sup>
- 6.6. While the General Notice gives basic details of the person designated (date and place of birth, aliases, nationality, residence, whether in custody), it does not include reasons for the designation – differing in that respect from the practice of the UN. It is of course vitally important that the fullest possible reasons for

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<sup>123</sup> Save in those cases contemplated in TAFE 2010 section 3(3) (person under 18; interests of national security or of justice; prevention or detection of serious crime), when the designation is not publicised generally.



designation be furnished to the person concerned.<sup>124</sup> The practice of not giving reasons in the General Notice (other than the fact of a terrorist conviction) seems to me however to be perfectly defensible, bearing in mind that there will be cases, unknowable in advance, in which the correctness of those reasons is contested by the designated person concerned. Indeed it has been suggested to me that even the limited statutory requirement to publicise the identity of designated persons is disproportionate and wrong, given the damaging and irreversible effects that such publicity may have.<sup>125</sup>

- 6.7. I was not able to have any first-hand experience of the review process in early 2011, other than what I have read in the files. Partly that was because the process was completed only shortly after my appointment as Independent Reviewer. More fundamentally, however, it was because – unusually for executive orders of this kind – there are no formal meetings for the purposes of review. Rather, the Treasury’s Asset-Freezing Unit collates information from the police and from departments and agencies by email, before preparing submissions which go to Ministers. There is an Asset Freezing Working Group, one of whose meetings I have attended, but its monthly meetings are concerned with communication at a more general level and its functions do not include the review of individual cases.
- 6.8. Asset-freezing is reviewed somewhat less formally than the other executive orders in the counter-terrorism field. Review of control order cases is discussed in regular Control Order Review Groups, and review of proscriptions is discussed at the Proscription Review and Recommendation Group and at the Proscription Working Group. I have attended meetings of CORG, PRRG and PWG, and believe that they perform a useful function both in bringing stakeholders together and by allowing assumptions to be tested by “*devil’s advocate*” type questions, regarding for example whether the objective of an executive order might not be achieved by other means. I return to this subject in my conclusions (10.19) and recommendations (11.2), below.

### **Special reviews**

- 6.9. In addition to the regular annual reviews, additional reviews are held in the event of a significant change of circumstances. Such changes might in principle include, in the case of individuals in the UK:

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<sup>124</sup> The extent of those reasons, and the time at which disclosure must be made, is however the subject of heated legal debate: see 9.6-9.7, below.

<sup>125</sup> TAFE 2010 section 3 requires the general publication of designations, save in specified circumstances (interests of national security, reasons connected with the prevention or detention of serious crime, interests of justice). Most control orders, by contrast, are anonymous.

- (a) the dropping of charges or acquittal of a designated person,
- (b) the conviction and imprisonment of a designated person, or
- (c) the release of a designated person from prison.

Two designated persons were released from prison during the period under review (Zahoor Iqbal in June 2011 and Habib Ahmed in September 2011), and were therefore the subject of special reviews.

- 6.10. In the case of a prison release, the designated person is once again asked for comments in advance of the release, with the aim of concluding discussions in time to put a submission to the Minister before or shortly after release. The ability of the Treasury to give informed advice to the Minister however depends on the quality of information available, including any indications there may be from inside the prison as to the prisoner's state of mind and likely future behaviour. It will also be necessary to take into account the viewpoint of police, probation service and others.
- 6.11. An appropriate forum for such discussions should be the Multi-Agency Public Protection Arrangements [MAPPA] that conduct risk-assessment of dangerous prisoners. It seems however that despite some efforts the Treasury has not been successful in integrating consideration of asset-freezing into the MAPPA process, which is in any event not uniform across the country. It is plainly desirable that the questions of whether to continue an asset-freeze and if so on what licensing terms should be considered at or alongside the MAPPA review and I return to this topic in my conclusions (10.20) and recommendations (11.4), below.

### **Designations allowed to lapse**

- 6.12. As noted at 5.11(b) above, 15 of the 19 designations that were allowed to lapse in March 2011 were duplicated by existing UN or EU designations. The decisions to allow these designations to lapse seem to me to have been not only appropriate but inevitable, given the necessity test in TAFE 2010 section 2(1)(b). Both UN listings (UNSCR 1267) and EU listings (pursuant to UNSCR 1373) were accorded binding force by EU Regulation, and given teeth in the UK by AQTAFR 2010 and TAFE 2010 respectively. It is difficult to see that additional listings pursuant to TAFE 2010 section 1(a) could have had any operational advantage such as to render them "*necessary for purposes connected with protecting members of the public from terrorism*".

- 6.13. In so saying, I recognise that, as was pointed out to me by a number of lawyers active in the field, persons designated under UNSCR 1267 might have preferred to remain designated also under TAFE 2010 on the basis that TAFE 2010 designation affords a superior process for challenging designation. Whilst a successful challenge to designation under TAFE 2010 would not automatically secure release from the UNSCR 1267 list, it could well be influential in the processes that operate within and around the UN Sanctions Committee.
- 6.14. The other four decisions to allow designations to lapse (Assad Barakat, Aabid Khan, Elehssan and Aum Shinrikyo) were taken on the basis that on the facts of the cases concerned, either the reasonable belief test was not capable of being satisfied or, if it was satisfied, the necessity test was no longer met.
- 6.15. I have read the file in each of these cases. The decisions to delist were reached after consideration, as appropriate, of evidence from police, the prison service and other agencies. Ministers were advised on the application of the reasonable belief test and necessity for public protection test in TAFE 2010 section 2(1), emphasising in particular the distinction between reasonable suspicion (the test under the Terrorism Orders) and reasonable belief (the test under TAFE 2010).
- 6.16. I make no further comment on the individual cases concerned. The system for delisting appears to have functioned properly, however, in that relevant evidence and the correct legal tests were brought to the attention of the Minister and informed his decision.

### **Designations maintained**

- 6.17. The reviews of early 2011 concluded that 30 designations of individuals and eight designations of entities should be maintained. The files demonstrate that each recommendation was carefully considered by the relevant Minister (normally Lord Sassoon), on the basis of submissions which were adequate for the purpose. It is not for me, as I have said, to second-guess these decisions. I am conscious also that two of the decisions to maintain designations (Ismail Bhuta and Zana Rahim) have been the subject of appeals, and that Ismail Bhuta has recently been delisted. Some general comments may however be in order.

### **Applying the reasonable belief test**

- 6.18. Section 3 requires reasonable belief of past or present involvement in terrorism-related activity ("*is or has been involved*").

- 6.19. The requirement of reasonable belief echoes the test of reasonable belief in the draft TPIM legislation,<sup>126</sup> and belief in the proscription legislation.<sup>127</sup> It contrasts however with the control order test of reasonable suspicion.<sup>128</sup> Reasonable belief is certainly a harder test to satisfy than reasonable suspicion; but there are indications in the case law that it may be easier to satisfy than the test of being satisfied on the balance of probabilities.<sup>129</sup>
- 6.20. Interim designations under section 6 may still be made on the basis of reasonable suspicion. That seems correct in principle: it would be paradoxical if someone arrested under TA 2000 section 41 on reasonable suspicion of involvement in terrorism could not have his assets frozen at the same time because that suspicion did not amount to a reasonable belief.
- 6.21. The other element of the test is “*is or has been involved*”. That echoes the test for a control order<sup>130</sup> but contrasts with the condition for proscribing an organisation, which requires continuing involvement.<sup>131</sup> The inclusion of past involvement in terrorism leaves the necessity test as the only jurisdictional block to designating former terrorists such as Nelson Mandela and Martin McGuinness.

### Applying the necessity test

- 6.22. The necessity test is similar, though not identical, to that in the control order legislation.<sup>132</sup> No such test exists in relation to proscription: in its place, the Secretary of State exercises her discretion on the basis of five factors.<sup>133</sup>

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<sup>126</sup> TPIM Bill clause 3(1).

<sup>127</sup> TA 2000 section 3(4). The courts may in practice require such belief to be reasonable: *Lord Alton v Home Secretary* [2008] EWCA Civ 443, para 43. The belief must, however, be that the organisation is *currently* concerned in terrorism, whereas reasonable belief/suspicion in *past involvement* suffices for the purposes of TFA 2010 and the control order / TPIM regimes, at least at this stage of the analysis.

<sup>128</sup> PTA 2005 section 2(1).

<sup>129</sup> See the citation at 3.20(b) above and the comment of Lord Neuberger MR, in the same case at para 370, that “*in deciding whether there are, as a matter of fact, reasonable grounds for suspicion or belief, SIAC is not necessarily concerned with primary facts, and, to that extent, there is no need to establish a primary fact on the balance of probabilities.*”

<sup>130</sup> PTA 2005 section 2(1)(a): “*is or has been involved in terrorism-related activity*”; the TPIM Bill clause 3 is to similar effect.

<sup>131</sup> TA 2000 section 3(4), requiring belief (which however need not be reasonable) “*that it is concerned in terrorism*”.

<sup>132</sup> PTA 2005 section 2(1)(b); cf. TPIM Bill, clause 3(3). Each however refers to protecting members of the public from “*a risk of terrorism*” rather than simply from “*terrorism*”.

<sup>133</sup> These factors are the nature and scale of the organisation’s activities, the specific threat that it poses to the United Kingdom, the specific threat that it poses to British nationals overseas, the extent of the organisation’s presence in the United Kingdom and – crucially in practice – the need to support other members of the international community in the global fight against terrorism.

- 6.23. The requirement in TAFE 2010 is not that designation be necessary “to protect” the public from terrorism, but that it be necessary “for purposes connected with protecting” the public from terrorism. That slightly looser formulation perhaps indicates a greater degree of latitude. There are however certain categories of cases in which the application of the necessity test may not be easy.
- 6.24. One of those is when **the designated person is in prison**. Some of those persons make representations to the effect that since they were imprisoned, it could not be “necessary for purposes connected with protecting members of the public from terrorism” that their assets should be frozen. As to that:
- (a) Prison governors are already required to approve all transactions made from prison, including the sending of money from prison accounts to external bank accounts and third parties, and instructions given from prison to operate external bank accounts.
  - (b) Designation however not only requires the prison governor to be licensed but protects against third parties dealing with a designated person’s funds, as to do so without authority from the Treasury is an offence.
  - (c) Even in cases where a prisoner has no significant assets in external accounts, an asset freeze prevents third parties from depositing money in those accounts which could potentially be used for terrorism.
- 6.25. Whether those arguments amount to “necessity” in an individual case will depend on all the circumstances of that case. The submission to the Minister will tend to have regard to the nature of the offence, the sentencing remarks of the trial judge, reports on the progress of the prisoner and the manner in which accounts have been used in the past. A special risk assessment form for prisoners (distinct from that used for other UK-based designated persons) identifies the key risks that the asset freeze is intended to mitigate, the assessment of the ongoing threat of funding terrorism and any particular concerns there may be.
- 6.26. A second difficult category is that of **overseas individuals or groups who have no substantial assets in the United Kingdom**.<sup>134</sup> The public to be protected from terrorism may of course be the public of any country in the world, and the offences under the Act have extraterritorial application: but particularly where individuals or entities have no links with the United Kingdom, and are in custody

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<sup>134</sup> The existence of this category is demonstrated by the fact that the delisting of 19 persons and organisations between December 2010 and March 2011 removed only six accounts and £20,000 from the total of assets frozen (see table compiled from Treasury quarterly reports at 5.28, above).

abroad or have recently been inactive, the utility let alone the necessity of a designation may not always be obvious. In such circumstances especially, the necessity test ought to ensure that TAFE 2010 cannot be used, as may sometimes be the case with proscription, just to “*further United Kingdom foreign policy goals by pleasing other governments*”.<sup>135</sup>

- 6.27. A third difficult category, which may sometimes overlap with the second, is where ***the evidence of terrorist involvement is long in the past***. That does not pose a problem for the reasonable belief test, as explained above. It may well however make it hard to satisfy the necessity test.

## Proportionality

- 6.28. In contrast to some similar measures,<sup>136</sup> TAFE 2010 contains no explicit requirement that action taken by the Treasury – whether on review, designation or indeed licensing – be proportionate. Since however any freeze of assets under the Act plainly engages the right to respect for home, family and private life under Article 8 and the right to peaceful enjoyment of possessions under Article 1 of the First Protocol to the ECHR,<sup>137</sup> the requirement that action be proportionate is just as much present as if it appeared on the face of section 2.

- 6.29. The effect of this is that a designation cannot be assumed to be lawful simply because it satisfies the “*trigger*” tests. The Treasury must be satisfied also that it is proportionate, in the sense that:

- (a) the legislative objective is sufficiently important to justify limiting the fundamental rights of the designated person;
- (b) the measures designed to meet the legislative objective are rationally connected to it; and
- (c) due consideration has been given to whether a less intrusive measure could have achieved the public protection aim without compromising it.<sup>138</sup>

The proper performance of the proportionality test thus requires some consideration both of the likely effect of asset-freezing on the designated person (which will depend on such factors as whether that person is out of custody or

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<sup>135</sup> *Report on the operation in 2010 of TA 2000 and TA 2006*, July 2011, para 4.2.

<sup>136</sup> See, e.g., CTA 2008 Schedule 7 paragraph 9(6), considered in *Bank Mellat v HM Treasury No. 2* [2011] EWCA Civ 1; [2011] 3 WLR 714.

<sup>137</sup> As the Government has accepted: *Draft terrorist asset-freezing bill: summary of responses* Cm 7888, July 2010, para 2.3.

<sup>138</sup> *Bank Mellat v HM Treasury No. 2* (above), per Maurice Kay LJ at paras 21-30. It may be that these concepts, or some of them, are already inherent in the necessity test: compare the use of the word “*necessary*”, importing concepts of proportionality, in Article 8 ECHR itself.

within the jurisdiction, and how long he has already been subject to designation) and of whether there are less intrusive means of protecting the public, whether in the UK or abroad, from the terrorist threat that the person has been assessed to represent. I return to this in my conclusions (10.12) and recommendations (11.1), below.

### **Selection of new candidates for designation**

- 6.30. No new designations were made during the review period. Nor were any candidates for designation put to the Treasury or to Treasury Ministers for their consideration.
- 6.31. There is thus no basis for commenting on whether the approach to new designations was correct. However my comments on the review process, above, are generally applicable also to future decisions whether to designate.

## 7. EXCEPTIONS AND LICENCES

### Exceptions to the prohibitions

- 7.1. The potential impact on the lives of a designated person's family has been reduced by an important exception, new to TAFE 2010, whereby the prohibitions do not apply to social security benefits paid to family members.<sup>139</sup>
- 7.2. Such benefits were previously included within the prohibitions on the basis that they may be used to cover the basic needs of the household to which the designated person belongs. The High Court and Court of Appeal upheld this position, on the basis of Regulation 2580/2001. However, after a reference from the (judicial) House of Lords in the same case, the CJEU ruled in a case on the Al-Qaida and Taliban sanctions regime that they should be excluded from the scope of the prohibitions.<sup>140</sup> This corrects a situation which, as solicitors acting for those involved have told me, was a significant contributor to hardship and family breakdown.

### The licensing system

- 7.3. Any system which allows for the freezing of individuals' assets must, if it is to operate flexibly and humanely, make provision for licences to be granted as an exception to the general prohibitions. Neither UNSCR 1267 nor UNSCR 1373 mentioned licences in this context; but UNSCR 1452 (2002) set out a procedure by which States may authorise exemptions from the freezes mandated by UNSCR 1267, both for "*basic*" and "*extraordinary*" expenses, and urged States to take account of those considerations when operating their own lists under UNSCR 1373.
- 7.4. The objectives of the licensing system are:
  - (a) to limit the degree of interference with the rights of the designated person and others affected (in particular, their rights to free use of their property) only to that which is necessary to address any risks of diversion of funds to terrorism; and
  - (b) to ensure that any such interference is proportionate to those risks.

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<sup>139</sup> TAFE 2010 section 16(3).

<sup>140</sup> Case C-340/08 R (*M and others*) v *HM Treasury* [2010] ECR I-3913.



- 7.5. General licences, and individual licences have each been granted under section 17(3)(a).<sup>141</sup> Most licences issued have been of indefinite duration, stating merely that (as is provided for in any event by section 17(4)) they may be varied or revoked at any time. Some individual licences have however been time-limited as envisaged by section 17(3)(c) (e.g. an additional licence to withdraw cash over a set 2-week period), and others authorise one-off transactions (e.g. travel costs) so that they are effectively exhausted once the licensed transaction is completed.

### General licences

- 7.6. General licences have obvious advantages, both in providing certainty and in reducing the time that is required to process individual licence applications. The number and scope of general licences are kept under review, and were significantly broadened in 2008. Nonetheless, they remain available only for highly specific purposes: in summary, insurance, legal expenses and prison accounts.

- 7.7. The current range consists of five general licences, dating from January 2011.<sup>142</sup> Each was issued under both TFA 2010 section 17 and the Al-Qaida and Taliban (Asset Freezing) Regulations 2010.<sup>143</sup> They have the effect of permitting, respectively:

- (a) the issuance of an insurance policy to a designated person;
- (b) the provision of goods on an immediate and temporary basis to policyholders and third parties under the terms of an insurance policy;
- (c) the grant of legal aid;
- (d) the payment by a third party of a designated person's legal expenses
- (e) the payment of sums to a prison governor for the use of a designated person while in prison.

Within the scope of their operation, these licences remove the need for designated persons or affected parties to apply for an individual licence on a case by case basis.

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<sup>141</sup> The boundary between general licences and the intermediate category of licences "*granted to a category of persons*" is a hazy one, as may be seen from the fact that some "*general licences*" give authorisations only to certain categories of person (insurers, prison governors).

<sup>142</sup> See [http://www.hm-treasury.gov.uk/fin\\_sanctions\\_general\\_licences.htm](http://www.hm-treasury.gov.uk/fin_sanctions_general_licences.htm).

<sup>143</sup> They are also stated to be issued under the EU Regulations appropriate to each regime: Council Regulation (EC) 2580/2001 and Council Regulation (EC) 881/2002.

- 7.8. The general prison licence allows third parties to transfer money to a prison governor to be held for the account of a prisoner. The governor can make the money available to him in prison in the normal way, and may also make payments on release of up to £50 for the prisoner and £50 for a hostel provider. The licence does not affect the outside assets of the prisoner, on which the prohibitions in the Act continue to bite.
- 7.9. The prison licence is obviously a good idea, since it is fanciful to suppose that any assets subject to it, which are under the control of the governor, might be used for the financing of terrorism. The other four general licences are also useful – though only within the scope of their operation (insurance and legal expenses). That scope is narrow. It means that for a person not in custody, general licences have little impact on the difficulties of day-to-day living that were identified by the Supreme Court in the *Ahmed* case.

### **Individual licences**

- 7.10. A designated person can apply for a licence, or for the terms of a licence to be changed, at any time. However the great majority of designated individuals and entities have made no individual licence applications, no doubt reflecting the fact that they are either in prison (and thus subject to the general licence for prisoners) or based outside the jurisdiction without significant assets in the UK.
- 7.11. A total of 26 licences were granted to seven individuals during the review period: Ismail Bhuta, Zana Rahim, Sultan Muhammad, Zahoor Iqbal, Habib Ahmed, Umar Islam and Tanvir Hussein. The first two have never been convicted of a terrorist offence, the next three were released from prison in June 2010, June 2011 and September 2011 respectively and the last two remain in prison. No individual licences have been granted to entities.
- 7.12. The individual licences have had the effect of permitting, among other things:
- (a) the payment of wages to a designated person;
  - (b) the receipt of rental payments by a designated person;
  - (c) the making of mortgage payments by a designated person;
  - (d) the transfer of sums to a designated person's spouse;
  - (e) the making of payments to an organisation which a designated person has supported in the past;
  - (f) the crediting of a mobile phone account by a relative of a designated person;

- (g) the payment of motor insurance premiums by a relative of a designated person;
- (h) the payment and receipt of social security benefits;
- (i) the payment of utility bills by a designated person;
- (j) the provision of legal expenses for the benefit of organisations with which a designated person is associated;
- (k) the payment of a designated person's air fare to India, and travel expenses;
- (l) the withdrawal of money for expenses (e.g. £100 per week, or a lump sum £200 for clothing).

7.13. The Treasury's starting presumption is that all reasonable requests for licences should be capable of being approved, with sufficient controls regarding reporting etc. They acknowledge that there should be no punitive intent. The objective is not to restrict individuals to basic expenses, or to a particular level of income, but to issue licenses where this can be done without giving rise to terrorist financing risks.

7.14. Where state benefits payable to the designated person are concerned, Treasury policy is to issue at the point of designation a licence to the benefits departments to pay any state benefits due, and a further licence allowing the designated person to access his funds to meet living expenses. A designated person will be allowed access to his full state benefit entitlement, save in the rare cases where terrorist financing risks are said to warrant some curtailment.

7.15. In each case, conditions are attached to the licences. These typically relate to maximum sums allowable and to provision of receipts, bank statements etc., typically on a monthly basis. Acknowledging the fact that receipts will not always be easily provided (e.g. for purchases from a kebab shop or market stall), it is now common for individual licences to require:

- (a) all receipts obtained in respect of expenditure; and
- (b) details of expenditure for which no receipt was provided (including the amount spent, where the money was spent, and a description of what was purchased).

While this does not remove the nuisance (let alone the intrusiveness) of having to account to the State for all sums spent, it does demonstrate a degree of flexibility where accounting for expenses is concerned.

- 7.16. Individual licence requirements can in principle be tested in the courts, by reference to “*the principles applicable on an application for judicial review*”.<sup>144</sup> Those principles, though ostensibly different from those applicable on an appeal, may in practice permit “*intense and detailed scrutiny*” in appropriate cases.<sup>145</sup>
- 7.17. A more significant barrier to court scrutiny, at least in the short term, is likely to be the length of time that court proceedings take. Since the proportionality or otherwise of a licence condition can only be tested by a court in possession of the full facts, and since there is usually closed material upon which the Treasury wishes to rely, resolution of even a simple case is likely to require the appointment of a special advocate and significant argument over disclosure before the substance of the matter can be reached, occupying at least several months.

### **Life as a designated person**

- 7.18. I have sought to evaluate not just how the system of designation and licences works on paper, but how it is experienced by those subject to it.
- 7.19. Most of those subject to it do not experience any material effects. That is because they are ***based abroad, with no significant assets in the United Kingdom***. Designation under TAFAs 2010 is unlikely to rank high on the list of obstacles faced by such entities as the Colombian terrorist group FARC, or Guantanamo inmate Khalid Sheikh Mohammed. As noted above, 10 of the 30 individuals designated by the Treasury at the end of the review period were in this position.
- 7.20. The second category of designated persons is those ***imprisoned in the United Kingdom*** – most of them for very long periods, on the basis of their involvement in major events such as the 21/7 bombings of 2005 and the airline liquid bomb plot of 2006. 15 of the individuals designated at the end of the review period are in this position. I have not spoken directly to these men, but have reviewed their files and spoken to solicitors who are experienced in representing prisoners subject to asset freezes. They tell me that the system works well. The general licence means that a person in custody should not face any difficulties gaining access to the credit on his prison account, and that family members may send money to the prison for his benefit without committing an offence.
- 7.21. The third category of designated persons is those who are ***at liberty in the United Kingdom***: five men at the end of the period under review, three of them

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<sup>144</sup> TAFAs 2010 section 26.

<sup>145</sup> See the proscription case *Lord Alton of Liverpool and others v Secretary of State for the Home Department* [2008] EWCA Civ 443, para 43.

released from prison and two who had never been in custody. I make no comment on the situation of individuals who have or who may have pending appeals and whose evidence of how they are affected by designation may therefore in due course have to be evaluated by a court. I have however spoken to a number of solicitors and barristers with recent experience of clients in this category, and to a doctor who was designated in 2007 and delisted in 2009, six months after he had been acquitted of criminal charges brought against him and then been granted bail, on light conditions, when it was sought to detain him after his acquittal under immigration powers with a view to deportation.<sup>146</sup>

7.22. The doctor described what he called the “*heavy impact*” of his designation, including:

- (a) a delay of several days after his release from prison in obtaining the urgent licences that he needed for transport, clothing and food;
- (b) constant delays in issuing licences: for example, the licences needed to pay fees for training courses and for travel to medical courses and an examination arrived only at the last minute;
- (c) a delay of eight weeks after delisting before his bank re-activated his debit card, coupled with the “*unbearable embarrassment*” of having to explain his situation to bank staff;
- (d) a consequent need to rely on friends for everything, which he described as “*the worst thing*” because it made him feel he had no autonomy and because friends were intimidated by the need to disclose their full details to the Treasury in order to obtain a licence;
- (e) the need to provide receipts for everything, even purchases from a corner shop that was not accustomed to giving receipts, and the sense of shame that asking for such receipts engendered;
- (f) being treated “*like the plague*” by potential employers ranging from local restaurants to the NHS, who were deterred from employing him as soon as they were notified that he was designated and that they would therefore require a licence to pay his salary.

7.23. The doctor felt that his designation was “*used as a punishment*”. He thought that the Government could have satisfied itself that there was no funding of terrorism by less onerous means, suggesting restrictions on overseas travel, a licence for

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<sup>146</sup> I should add that the doctor has never been the subject of any adverse finding by a court; he was re-admitted to practice by the General Medical Council in July 2009; and in November 2011 the Government agreed to grant him indefinite leave to remain in the country.

any item of expenditure exceeding £500, receipts for any expenditure exceeding £50. He concluded, echoing the Supreme Court in *Ahmed*, that designation was “*exactly like being in prison, without being physically restrained*”. He did not suggest to me that his problems were caused by malice or by refusals to grant him licences: rather, by the slowness of the administrative process and by the humiliation, sense of powerlessness and diminution of autonomy that is inherent in any system that aims to control people in this way.

7.24. Since that designation was lifted in mid-2009, I am told by the Treasury that the licensing regime has markedly improved. In particular:

- (a) Current practice is to send a financial questionnaire asking about a designated person’s assets and licensing needs about a month before their release from prison. The necessary licences should therefore be in place before release, and can be supplemented if necessary by emergency licences in the case of change of circumstances.
- (b) Any up-front risk assessment framework **[RAF]** makes it easier for routine licence applications to be processed relatively swiftly.
- (c) Receipts where not provided are not required, though designated persons remain obliged to report on all items of expenditure and will be expected to explain why a receipt is not available.

7.25. A number of solicitors who act routinely for designated persons have confirmed to me that the licensing regime has significantly improved over the past few years. Of particular importance in reducing the hardship experienced are:

- (a) the exclusion from the TAFE 2010 prohibitions of social security benefits paid to family members, as a consequence of a 2010 judgment of the CJEU, given effect in the Act;<sup>147</sup> and
- (b) the greater accessibility of staff in the Treasury’s Asset Freezing Unit and their improved speed of response (assisted, it is supposed, by the very small number of designated persons who are at liberty in the jurisdiction and therefore likely to be in need of individual licences).

7.26. As solicitors have also pointed out, however, there are aspects of living with designation which (even if not the responsibility of the Treasury) remain troublesome even after these improvements. Those include:

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<sup>147</sup> See 7.2, above.

- (a) Persistent problems in dealing with banks, some of which impose restrictive rules of their own (e.g. over-the-counter cash withdrawals only) and may feel obliged to apply time-consuming procedures to all interactions with designated persons.<sup>148</sup>
- (b) Practical difficulties caused by even short delays in issuing licences, e.g. missing out on the opportunity to buy a second-hand car because of the need to obtain a licence for the transfer of the necessary funds;
- (c) Uncertainty and embarrassment over whether an Eid gift, or the offer of a cup of tea in a café, can be accepted;
- (d) Resentment over Treasury monitoring of day-to-day expenditure and charitable giving (a religious obligation for many Muslims);
- (e) Negative reactions from employers or from friends who are expected to have licences in order to transfer funds to the designated person's account;
- (f) A need to be "*anxious, the whole time*" because of uncertainties as to what is permitted, either because of vague legal provisions ("*significant financial benefit*") or because of practical problems to which there is no obvious answer (can a designated person borrow his wife's Oyster card?);
- (g) A "*chilling effect*", causing some people react to designation by shrinking their horizons to the home rather than grappling with difficulties such as the above.

I respond to some of these themes in my conclusions (10.26) and recommendations (11.7-11.9), below.

- 7.27. One solicitor questioned whether designation could really be considered necessary after release from prison, in circumstances where licence conditions could already be used to regulate many aspects of the person's behaviour.

## Conclusion

- 7.28. There is general acknowledgment that the licensing system works better than in the past, and that the Treasury are on the whole accessible and responsive to requests. Their ability to respond in this way is welcome, though it may in part be a function of the very small number of designated persons for whom individual licences are in practice required.

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<sup>148</sup> It is a theme of several conversations I have had with those suspected of involvement in terrorism that banks are reluctant to handle their accounts. See further 8.4, below.

- 7.29. However efficient the system, however, designation is likely to be experienced, by anyone at liberty in the United Kingdom who is subject to it, as intrusive, demoralising and humiliating.<sup>149</sup> As such, designation in such circumstances requires particularly clear and continued justification.
- 7.30. It also requires individual licences to be as flexible and proportionate as possible, a point made to me by financial institutions, designated persons and their representatives alike. I return to this subject in my conclusions (10.26) and recommendations (11.7), below.

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<sup>149</sup> Indeed the Government has accepted that asset freezes impinge upon the rights of such persons under Article 8 of the ECHR: *Draft terrorist asset-freezing bill: summary of responses* Cm 7888, July 2010, para 2.3.



## 8. OPERATION OF THE PROHIBITIONS

### Content of the prohibitions

- 8.1. The five categories of prohibited conduct are summarized at 4.8, above.
- 8.2. The third party obligations are similar in nature to those that applied under the Terrorism Orders. To the extent that they have evolved, the changes have lightened the burden on third parties. Thus:
- (a) Making economic resources available to or for the benefit of a designated person is an offence only if there was knowledge or reasonable cause to suspect that this was happening, and if the designated person is likely to exchange the economic resources, or use them in exchange, for funds, goods or services.<sup>150</sup>
  - (b) Making funds, financial services or economic resources available for the benefit of a designated person is an offence only if there was knowledge or reasonable cause to suspect that this was happening, and if there is significant financial benefit.<sup>151</sup>

### Experience of the banks

- 8.3. The breadth of the prohibitions, even thus reduced, is such as to impose onerous obligations not only on the designated person but on third parties: principally, financial institutions. The BBA told me that many banks have to screen millions of transactions per month in order to comply with the various sanctions regimes, and drew my attention also to uncertainties and ambiguities over the systems and controls that banks are expected by the Financial Services Authority to have in place. This is the subject of ongoing discussions between the BBA, the Treasury and the FSA.
- 8.4. I have also spoken to persons who are currently or have in the very recent past been entrusted with compliance on behalf of two major banks. I took the following points from those conversations:
- (a) The banks are generally supportive of the aims of the asset-freezing regime, but tend to operate highly elaborate control structures, because of what is perceived as the huge reputational and regulatory risk of being seen to assist in the financing of terrorism. As one put it to me, even an inadvertent association with the funding of an incident such as 7/7 "*could bring down a whole bank*".

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<sup>150</sup> TAFE 2010 section 14.

<sup>151</sup> TAFE 2010 sections 13, 15.

- (b) Rules commonly imposed by banks include not permitting debit cards (because a single excessive withdrawal could put the bank in breach of the law), limiting the branches that can be used to take out money, requiring the designated person to telephone before entering the branch and permitting only the branch manager to release funds (because it is felt to be unfair to expect counter staff to deal with a suspected terrorist).
- (c) Some banks can offer more flexible solutions, for example a pre-loaded card that allows a designated person to draw funds from a cashpoint up to the licensed amount. However it would not be realistic to expect all banks to adopt this best practice, since some do not offer pre-loaded cards in any circumstances and they can hardly be asked to devise a new product for the tiny number of designated persons that they are likely to have on its books.
- (d) Banks are embarrassed when their electronic systems throw up false positives, for example new-to-bank customers who share a name with a designated person or one of his aliases, and are treated in consequence as though they may be a terrorist. The Treasury was praised for the work it has done in the past 18 months to improve the specificity of its list, reducing the number of such incidents.
- (e) Banks are prohibited from closing accounts during the currency of an asset freeze, at least where there is money in the account, because to return the money to the designated person would be in breach of the law. However one bank admitted to me that it will always close such accounts when a person is de-designated, citing a wish to avoid regulatory exposure. That habit was drawn to my attention also by a solicitor acting for designated persons, who said that *"this always catapults the person into complete crisis"*.
- (f) It was felt that relations with designated persons could be more effectively managed if individual licences were written more flexibly, so that (for example) no offence would be committed if benefits are paid late and two weeks' benefits are made available at the same time.
- (g) It was also suggested that banks would appreciate greater consistency across the various sanctions and asset-freezing regimes that they have to administer; a general licence addressed to them; and greater certainty as to what procedures will attract adverse attention from regulators.

8.5. To draw detailed conclusions in relation to this matter would require a more extensive canvassing of opinion among financial institutions and regulators than I have been able to achieve in my first review. It is clear however from my conversations both with banks and with designated persons and their

representatives that there is scope for improvement in the way that banking services are provided to designated persons, and that fear of regulatory backlash is an important obstacle to this process. It is particularly troubling that any major bank should feel the need to have a policy of closing bank accounts once designation comes to an end.

- 8.6. I return to this subject in my conclusions (10.27) and recommendations (11.8), below.

### **Compliance with prohibitions**

- 8.7. Breaches of the prohibitions may come to the attention of the Treasury either as a consequence of reporting by a designated person or (as is normally the case) after an alert from the financial sector.
- 8.8. There is a graduated series of possible responses to a breach. A one-off low-value reporting discrepancy might simply be noted without further action: other options include writing to solicitors or designated persons requesting an explanation, notifying any third parties involved, considering variation to or withdrawal of a licence and discussing the matter with police for a criminal investigation, with a view to referral to the Crown Prosecution Service **[CPS]**.
- 8.9. A 2009 report by the Financial Crime and Intelligence Division of the Financial Services Authority **[FSA]** revealed a number of misconceptions among smaller financial services firms in particular, often taking the form of a failure to understand the full scope of sanctions regimes.<sup>152</sup> This is troubling. The FSA is responsible for ensuring that regulated financial institutions have appropriate systems and controls for meeting their financial crime obligations, including on financial sanctions. The Treasury however does a certain amount to raise awareness, speaking to bodies such as the BBA, the Association of British Insurers **[ABI]** and the UK Money Transmitters Association **[UKMTA]**. It also liaises with the various Supervisory Authorities under the Money Laundering Regulations, promoting the inclusion of, and commenting on, sanctions information in industry guidance.
- 8.10. No criminal proceedings for breach were brought during the period under review, against either designated persons or third parties, though the FSA has in the past levied at least one substantial fine for failing to ensure that funds were not transferred to people or entities on sanctions lists.

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<sup>152</sup> *Financial services firms' approach to UK financial sanctions*, April 2009.

## 9. APPEALS AND REVIEW

### Number of appeals

- 9.1. No appeals against designations under TAFA 2010 or the Terrorism Orders were determined during the period under review.
- 9.2. Two designated persons had pending appeals: Ismail Bhuta and Zana Rahim. These were, perhaps not coincidentally, the only individuals designated under TAFA 2010 during the period under review who were resident in the United Kingdom but were not (and had not been) in custody for a terrorist offence.
- 9.3. **Ismail Bhuta** was originally designated in September 2009 under T(UNM)O 2009. After the judgment in *Ahmed*, the basis for that designation shifted to the TAF(TP)A 2010 and then to TAFA 2010. He lodged in October 2010 an application to set aside his designation under T(UNM)O 2009, joined in May 2011 by an appeal against his designation under TAFA 2010. Mr. Bhuta denied any involvement in terrorism, and contended that he has been given insufficient disclosure to defend himself. He was delisted on 29 November 2011.
- 9.4. **Zana Rahim** was originally designated in March 2009 under T(UNM)O 2006. In August 2010 he first applied to set aside his designation (by now under T(UNM)O 2009) and in June 2011 he appealed against his designation under TAFA 2010. Mr. Rahim also claimed disclosure of further evidence and information, and raised a variety of legal issues on his appeal. He remains designated.

### Progress of appeals

- 9.5. Neither set of appeals made swift progress during the period under review. The Bhuta cases in particular however did raise an issue of general importance for all asset-freezing appeals: the extent to which evidence in support of the asset freeze must, on appeal, be disclosed to the designated person so that he can properly instruct the special advocate appointed to make submissions on his behalf.
- 9.6. Mr. Bhuta argued that designated persons who bring appeals, like their counterparts in control order litigation<sup>153</sup> and in the EU courts,<sup>154</sup> are entitled, pursuant either to Article 6 ECHR or to the common law duty of fairness, to be given sufficient information about the evidential case against them to enable them to give effective instructions in relation to that case. A ruling of 27 June

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<sup>153</sup> *Secretary of State for the Home Department v AF (No. 3)* [2009] UKHL 28.

<sup>154</sup> Joined Cases C-402/05P and C-415/05P *Kadi v Council* [2008] ECR I-6351, paras 346-349.

2011 to the effect that Article 6 was not applicable<sup>155</sup> was appealed, by permission of the High Court, and a ruling on this and on a cross-appeal by the Government was awaited from the Court of Appeal when Mr Bhuta was delisted on 29 November 2011.

- 9.7. Meanwhile, the Government – which has thus far firmly resisted the proposition that the same disclosure requirements should apply to asset freezing cases as apply in control order cases – has proposed legislating to clarify the contexts in which it is and is not necessary to give an individual sufficient information about the case against him to allow him effectively to instruct the special advocate.<sup>156</sup>

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<sup>155</sup> *R (Bhutta) v HM Treasury* [2011] EWHC 1789 (Admin), following *Secretary of State for the Foreign and Commonwealth Office v Maftah and Khaled* [2011] EWCA Civ 350.

<sup>156</sup> Green Paper *Justice and Security* Cm 8194, October 2011, 2.39-2.46; see also *Tariq v Home Office* [2011] UKSC 35.

## 10. CONCLUSIONS

### Content of TFAFA 2010

- 10.1. My statutory function is to review the operation of TFAFA 2010 Part 1 – a function which allows me to recommend amendment to the Act should I take the view that circumstances so require.
- 10.2. The Act gives remarkable powers to the executive, even by the standards of counter-terrorism legislation.<sup>157</sup> Thus:
- (a) Both interim and final designations may be made by the Minister, without any involvement of Parliament or of the courts.
  - (b) This contrasts with the control order regime, which requires the Secretary of State to obtain the permission of the court before making an order (or, in urgent cases, to refer the order to the court immediately it has been made).<sup>158</sup>
  - (c) It contrasts also with the proscription regime, in which Parliament must agree to the proscription of any new organisation by approving the affirmative order adding it to the proscribed list.<sup>159</sup>
- 10.3. The Act constitutes a significant improvement on the Terrorism Orders (and indeed, in some respects, on the Bill that was initially introduced to the House of Lords). In particular:
- (a) **Reasonable belief** as a requirement for final designation has replaced the *reasonable suspicion* threshold which members of the Supreme Court in *Ahmed* expressed their unease.<sup>160</sup> No consequential operational disadvantages have been brought to my attention.
  - (b) Challenges to both interim and final designations can be made by way of **full appeal** to the High Court or Court of Session, rather than by way of judicial review.<sup>161</sup>

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<sup>157</sup> See, generally, section 4 above.

<sup>158</sup> PTA 2005 section 3. Similar provision is made in the TPIM Bill: clause 3(5) and Schedule 2.

<sup>159</sup> TA 2000 section 3. Interesting debates may ensue: see e.g., in relation to the proscription of the Pakistan Taliban, Hansard (HL) 19 January 2011 col 603ff; Hansard (HC) 20 January 2011 col 963ff.

<sup>160</sup> See 3.20(b) and 6.18 - 6.21, above.

<sup>161</sup> TFAFA 2010 section 26(2).

- (c) In several other respects, the Act is materially improved from the Terrorism Orders considered in *Ahmed*.<sup>162</sup>

10.4. Other imperfections arguably remain in the Act. For example:

- (a) There is no specific requirement, as there is in relation to control orders and TPIMs,<sup>163</sup> that before designating a person suspected of committing a terrorist offence, the Treasury should have to **consult the police about whether the person could be prosecuted**. While it could be argued that the purpose of an asset freeze is preventative rather than punitive, the same could be said of control orders; and the omission might be considered a missed opportunity to emphasise the primacy of the criminal process over control by executive order.<sup>164</sup>
- (b) The reasonable belief test, in the Government's own estimation, falls some way short of establishing involvement in terrorist activity on the **balance of probabilities** (the civil standard of proof).<sup>165</sup> This was considered to be a more appropriate test by the JCHR,<sup>166</sup> and can scarcely be described as unrealistic when it has recently been put forward by the Government in the draft Enhanced TPIM Bill.<sup>167</sup>
- (c) There is no requirement in sections 3 or 7 that **reasons for a designation be given**,<sup>168</sup> though in practice some reasons are given.
- (d) No alteration is made to the rules governing the closed material procedure applicable to appeals, in particular to ensure that those designated are entitled, on appeal, to have **disclosure of the gist** of the allegations upon which the Treasury relies.<sup>169</sup> However the application of that principle to asset freezing has been before the courts, if (so far) inconclusively<sup>170</sup> - and it

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<sup>162</sup> See 3.21, above.

<sup>163</sup> PTA section 8; TPIM Bill clause 10.

<sup>164</sup> As the JCHR has pointed out in this context, Lord Phillips in the Supreme Court in *Ahmed* observed that “*the natural way of giving effect to [UNSCR 1373] would be by freezing the assets [only] of those convicted or charged with the offences in question.*”

<sup>165</sup> *A v Secretary of State for the Home Department* [2004] EWCA Civ 1123.

<sup>166</sup> *Legislative Scrutiny: Terrorist Asset-Freezing etc Bill (Second Report)*, 12 November 2010, HL Paper 53, HC 598, para 1.8.

<sup>167</sup> Section 2(1) of the draft Bill published on 1 September 2011, which would permit “*enhanced TPIM notices*” including relocation without consent and a ban on using communication devices, would require the Secretary of State to be “*satisfied on the balance of probabilities that the individual is or has been involved in terrorism-related activity*”.

<sup>168</sup> As recommended by the JCHR, *Legislative Scrutiny: Terrorist Asset-Freezing etc Bill (Second Report)*, 12 November 2010, HL Paper 53, HC 598, para 1.13.

<sup>169</sup> The position is currently governed by TAFE 2010 section 28(4) and CTA 2008 section 67(3)(c). The JCHR recommended change: *Legislative Scrutiny: Terrorist Asset-Freezing etc Bill (Second Report)*, 12 November 2010, HL Paper 53, HC 598, paras 1.20, 1.22.

<sup>170</sup> *R (Bhutta) v HM Treasury* [2011] EWHC 1789; the High Court granted permission to appeal.

seems that the issue, which applies in closed material procedures generally, may yet be dealt with in other legislation.<sup>171</sup>

It may well be that such changes would strengthen the protection of the individual without significant loss of operational effectiveness.

- 10.5. Some have suggested a more fundamental weakening of the executive's dominance of the system, urging a system where (as in Ireland and France) the decision to designate rests with the courts rather than the Executive.<sup>172</sup> Such a system would certainly concentrate the Government's mind, particularly in cases where it is doubtful whether the necessity test is satisfied. The procedure would however be time-consuming and cumbersome, including in the great majority of cases where designated persons and entities have not until now displayed much desire to have their designations tested by the courts. Accordingly I do not associate myself with that recommendation.<sup>173</sup>
- 10.6. Another possible change for future consideration would be to limit the maximum duration of a designation under the Act to two years, absent fresh evidence of involvement in terrorist activity. There is a precedent for this course in the TPIM legislation.<sup>174</sup>
- 10.7. Finally, as noted at 6.6 above, the presumption in TAFE section 3 that the world at large will be notified of a designation is strongly resented by some designated persons, who object to being stigmatised in this way without the authority of a court.
- 10.8. I have decided not to recommend amendment of TAFE 2010 in my first report. In coming to that decision, I have in mind the following:
  - (a) The Act was recently adopted after a thorough series of parliamentary debates, in which the arguments for many of the above changes were ably put, particularly in the House of Lords, but defeated.
  - (b) Though the Act certainly represents a fuller implementation of UNSCR 1373 than that Resolution requires, comparable thresholds exist in some

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<sup>171</sup> See the Green Paper of October 2011 *Justice and Security* Cm 8194, 2.39-2.46, under which consultation is open until 6 January 2012.

<sup>172</sup> As urged in debate by Lord Lloyd and Lord Lester (HL Deb 6 October 2010 cols 123-4 and 136, though not by Lord Pannick, who considered that the full right of appeal "*renders insubstantial the concern that the original decision is taken by the Executive*" (col 145).

<sup>173</sup> Compare my similar conclusion in relation to proscription: *Report on the operation in 2010 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006*, July 2011, 4.23 - 4.24.

<sup>174</sup> TPIM Bill, clauses 3 and 5.



comparable jurisdictions,<sup>175</sup> and there is little in the case law to suggest that the Act's provisions are incompatible with the UK's human rights obligations.

- (c) Some of the objectives identified in 10.4 above – for example the consultation of police – could be achieved through changes in administrative practice, which it is open to me to recommend: see 11.3, below.
- (d) It would be desirable, in any event, for consideration of any possible amendments to wait until more experience has been accumulated of the operation of the Act.

I will however keep all the aspects identified at 10.4 above under review.

### **Grounds for designation**

- 10.9. The number of persons designated under TAFE 2010 and its predecessors has declined sharply, from 149 at the start of 2009 to 38 at the end of the period under review.
- 10.10. Much of that decline is attributable to the removal of Treasury designations that duplicate designations at UN or EU level. I make no criticism of that course (even though it may not be considered beneficial by those affected):<sup>176</sup> indeed it is arguably required by the “*necessity test*” in TAFE 2010 section 2(1)(b).
- 10.11. A smaller number of persons have been delisted because they do not satisfy the more stringent conditions for designation in TAFE 2010 (reasonable belief, and the necessity test).<sup>177</sup> That is a welcome consequence of these improvements to the triggers for designation.
- 10.12. While recent delistings have been the consequence of clear and understandable policies, I am not convinced that the same degree of coherent thought has gone into the decisions over the years to designate and to continue designations. As a consequence, the Treasury list has a distinctly haphazard look. In particular:
  - (a) The sums frozen (a total of some £100,000 at the end of the period under review) are small and in decline. No individuals were designated during the review period. Every one of the currently designated organisations has been listed since 2001. No Northern Irish individual or group was designated at all. All these facts suggest that other means of combating the

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<sup>175</sup> For example Canada and New Zealand, both of which provided for a “*reasonable grounds to believe*” test to be applied by the executive without parliamentary or automatic judicial involvement: see 3.30, above.

<sup>176</sup> See 6.13, above.

<sup>177</sup> See 6.14 - 6.16, above.

financing of terrorism are considered preferable in most cases, and make it necessary to explain why those who are still on the Treasury list come to be there.

- (b) A substantial number of designated persons and entities are based overseas, and have few if any discernible links with the United Kingdom. It is unlikely that these overseas designations will be challenged, because many of those designated are not in practice affected by their designation. There is however a tension between the understandable wish to show solidarity with other governments in the struggle against terrorism, and the legal requirement in TFA 2010 that a designation should be *necessary* (which at a minimum implies *effective*) for purposes connected with protecting members of the public from terrorism.
- (c) Over half the designated individuals are in prison in the United Kingdom. Overwhelmingly, they were convicted in high-profile cases and designated at about the time of arrest, initially so as to guard against the risk of money being transferred to other plotters who might still have been at large. However justifiable those initial reasons may have been, the *necessity* for continued designation of these men in the very different circumstances of their imprisonment is not always clear. The tendency to designate principally those involved in the most notorious plots also invites consideration of whether designation has been correlated to risk of terrorist financing or rather by a desire to throw the book at high-profile suspects and offenders.
- (d) Whilst few individuals at liberty in the United Kingdom are subject to designation under TFA 2010, the impact of designation on their lives and that of their families can be very significant; and legal proceedings may take a long time to be resolved. The fact that the proportionality of a decision may in due course be considered by a court does not absolve Ministers (in their capacity as public authorities for the purposes of the Human Rights Act 1998) from their own responsibilities to ensure that the decision is proportionate.

10.13. This is not to say that individuals or groups have necessarily been wrongly designated, or had their designations wrongly renewed. It may however be questioned whether the necessity test is met in all cases, particularly where the designated person is in prison or abroad. Nor is it plain what principles inform the discretion whether to designate a person in respect of whom both statutory tests are satisfied.

- 10.14. All this points up the need to have a publicly stated policy (along the lines of that which was presented to Parliament in relation to proscription)<sup>178</sup> regarding both the circumstances in which the necessity test in TFA 2010 is deemed to be satisfied, and the factors that will operate on the Treasury's discretion (e.g. elapse of time since last known terrorist activity, availability of alternative solutions) in cases where both the reasonable belief/suspicion and the necessity test are satisfied.
- 10.15. My recommendations to this effect are at 11.1, below.

### **Procedures for designation and review**

- 10.16. Designation under TFA 2010 is just one of a number of measures available to the authorities for striking at the financing of terrorism.<sup>179</sup> Furthermore, as an executive order, capable of imposing significant restraints on individuals without the authority of the courts, a TFA 2010 asset freeze may be particularly severe in its effects on individuals.<sup>180</sup> Comparable measures have been described as targeted assaults by the state on an individual's privacy, reputation and property and as akin to criminal punishment, particularly where their duration is prolonged.<sup>181</sup>
- 10.17. For these reasons, it seems to me to be of the highest importance that persons should not be designated, and that their designations should not be renewed, without careful consideration being given at all stages to the available alternatives. That is part of ensuring that designation is proportionate (and, indeed, in the words of TFA 2010 itself, "*necessary*").
- 10.18. I make no recommendation as regards the sometimes mooted transfer of responsibility for TFA 2010 from the Treasury to the Home Office. Whilst there could be organisational benefits in grouping all counter-terrorism measures under the same departmental umbrella, cross-departmental fora such as the Home Office-led Special Cases Working Group are already capable of ensuring these. Furthermore, the Treasury has countervailing advantages in terms of its relationships with financial institutions and with the US Treasury, which has an important role in relation to terrorist sanctions.

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<sup>178</sup> See the statement of Lord Bassam Hansard HL vol 613 col 252 (16 May 2000) and the Home Office press release of 28 February 2001 which accompanied the first proscription Order under TA 2000. The relevant factors in the exercise of ministerial discretion were there identified as (a) the nature and scale of an organisation's activities, (b) the specific threat that it poses to the United Kingdom, (c) the specific threat that it poses to British nationals overseas, (d) the extent of the organisation's presence in the United Kingdom, (e) the need to support other members of the international community in the global fight against terrorism.

<sup>179</sup> See 2.1 - 2.5, above.

<sup>180</sup> See 7.18 - 7.27, above.

<sup>181</sup> See 2.7 - 2.8, above.

10.19. I do however suggest a more modest systemic change. The current somewhat *ad hoc* system has produced useful results, in the form for example of delistings in response to changes in the legal framework.<sup>182</sup> However it seems to me that there would be advantage in a more formal designation and review process, akin to that which operates in relation both to proscription and control orders. That view was indeed expressed to me by some of the departments and agencies to which I have spoken. Such process should invite input from all relevant departments and agencies, and include specific consideration of whether the aims of the asset freeze could be achieved by prosecution, accompanied if necessary by the seizure of assets.

10.20. Concerns were also expressed to me that the inevitable review of an individual's designation prior to his release from prison is not always sufficiently integrated into consideration of the licence conditions imposed upon the person.

10.21. My recommendations to this effect are at 11.2-11.4, below.

### **Transparency**

10.22. The proliferation of asset-freezing and sanctions powers, and the Treasury's practice regarding the publicising of those subject to such powers, make it difficult to distinguish the operation of TAFE 2010 from that of other similar measures. Those designated under TAFE 2010 can be deduced, with some difficulty, from other public documents. However a simple list of such persons (along the lines of Annex 5 and Annex 6 to this Report) would be a useful instrument not only for the Independent Reviewer but for others (MPs and members of the public) wishing to observe and evaluate the effects of the Act. This would not involve publicising information not already in the public domain.

10.23. The quarterly reports laid before Parliament by the Treasury pursuant to TAFE 2010 section 30 could, for the same reason, be usefully expanded in their scope, along the lines of recommendations made by my predecessor in relation to the quarterly reports on the control order regime.<sup>183</sup>

10.24. My recommendations to this effect are at 11.5-11.6, below.

### **Licensing and compliance**

10.25. The Treasury's Asset-Freezing Unit has in recent years displayed increased flexibility, and reduced response times, in relation to the grant of individual licences to designated persons. I commend it for these improvements. Whilst the

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<sup>182</sup> 5.11 - 5.13, above.

<sup>183</sup> See 4.20, above.

numbers of those requiring such licences have tended to be fairly small, it is evident from the files that even the simplest request can generate a large amount of email traffic and consume significant time and resources both within the Treasury and elsewhere.

- 10.26. Designated persons and their legal representatives still however experience uncertainties as regards what they are and are not allowed to do. To contravene the prohibitions in the Act is a serious matter, and as a result this uncertainty can generate great anxiety. A designated person should not have to worry about whether he will be committing a terrorist offence by allowing a friend to buy him a cup of tea, or borrowing his spouse's Oyster card: but some of them do,<sup>184</sup> and they are not in a position to take legal advice every time such a dilemma arises. Banks also told me that they found the terms of some individual licences to be excessively rigid.<sup>185</sup> It is in everybody's interests to ensure that the obligations placed on designated persons and on third parties are as clear as possible, and no more restrictive than is necessary to achieve the preventative purpose of the designation.
- 10.27. Banks generally support the aims of asset-freezing, but are often induced by reputational and regulatory risk to operate the asset freezes in a highly conservative manner which can be the cause of significant frustration and even humiliation for designated persons.<sup>186</sup> Some have told me that they would welcome greater consistency as regards the various sanctions and asset-freezing regime, more flexibility in individual licences and a general licence for bankers. They also feel a greater need for certainty as to what procedures will attract the adverse attention of regulators. Without a further-reaching investigation, I make no specific recommendations in this regard. It seems plain however that matters could be improved. I was particularly concerned to learn that some banks will as a matter of course close the account of a designated person after the designation is lifted.
- 10.28. My recommendations in relation to licensing and compliance are at 11.7-11.9, below.

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<sup>184</sup> See 7.26, above.

<sup>185</sup> See 8.3(f), above.

<sup>186</sup> See 7.22, 7.26 and 8.4, above.

## **11. RECOMMENDATIONS**

I make nine recommendations grouped under four heads, as follows.

### **Grounds for designation (10.9 – 10.15, above)**

**11.1. The Treasury should issue and present to Parliament a statement of policy regarding its approach to designation under TAFSA 2010, in order to ensure that the power is used in a consistent and principled manner. That statement should deal, in particular, with:**

- (1) the factors that may lead the Treasury to conclude that the statutory tests for designation (in particular, the necessity test) are satisfied;**
- (2) the factors that in a case where the statutory tests are satisfied may inform the Treasury's exercise of its discretion to designate (or to retain a designation in force).**

**It should also confirm that no designation will be made, or retained in force, without consideration of whether designation would be proportionate bearing in mind the anticipated effect on private and family life (Article 8 ECHR) and property rights (Article 1 of the First Protocol).**

### **Procedures for designation and review (10.16 – 10.21, above)**

**11.2. With a view to ensuring that all relevant views and all other available options are considered in a structured manner, consideration should be given to addressing designations and reviews at regular meetings, modelled on meetings of the Control Order Review Group and the equivalent groups dealing with proscription, where the option of designation can be rigorously tested against possible alternatives on the basis of input from all concerned departments and agencies.**

**11.3. As part of the exercise of ensuring that all available alternative options are considered, the police should be asked to advise specifically on the prospects for prosecution (accompanied, if necessary, by seizure of assets pursuant to ATCSA 2001 section 1).**

**11.4. Where reviews are conducted prior to release from prison, the review process should be more effectively co-ordinated with the MAPPA process, so that the necessity or otherwise of an asset freeze can be assessed together with other possible licence conditions.**

**Transparency (10.22 – 10.24, above)**

- 11.5. **A list should be available on the Treasury’s website of those who are designated under TAFE 2010.**
- 11.6. **The quarterly reports laid before Parliament by the Treasury, pursuant to TAFE 2010 section 30, should include at least the following information:**
- a. the total number of accounts frozen at the end of the quarter, and the amount of money they contain;**
  - b. the numbers of designated persons who at the end of the quarter were (i) individuals in custody in the UK, (ii) individuals at liberty in the UK, (iii) individuals abroad (iv) organisations, distinguishing in the case of individuals between UK nationals and others;**
  - c. the numbers of designations and reviews completed during the quarter, any developments in the procedures used, the results of the reviews and the names of any person or organisation newly designated or delisted;**
  - d. any additions or amendments to general licences issued during the quarter;**
  - e. the numbers of specific licences issued, and any new trends or developments in relation to specific licences;**
  - f. the number and basis of legal challenges brought during the quarter, a summary of the progress of all legal challenges and the references to any open judgments and**
  - g. any plans for future changes to the system.**

**Licensing and compliance (10.25 – 10.28, above)**

- 11.7. **Continuing efforts should be made to draft individual licences with the maximum flexibility appropriate to the case.**
- 11.8. **Dialogue between financial institutions, their regulators and the Treasury should seek to simplify the discharge by financial institutions of their responsibilities, and to identify ways in which those responsibilities can be discharged without causing needless frustration and humiliation to**

**designated persons (for example, by the automatic closure of their accounts once designation ceases).**

- 11.9. The Treasury, after informal consultation with solicitors active in this field, should produce a list of FAQs intended as practical guidance to persons subject to designation. The purpose of such a document would be to highlight what is prohibited but also to reassure designated persons by explaining, in simple non-legal language, the sort of transactions that they are free to enter into.**



**ANNEX 1**

**Quarterly Report (T(UNM)O 2009) Oct – Dec 2010**

*Written Ministerial Statement*

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**Operation of the UK's Counter-Terrorist Asset Freezing Regime: October to December 2010 and update on the appointment of the Independent Reviewer of the regime.**

**The Financial Secretary to the Treasury (Mark Hoban):** The Government is committed to reporting quarterly on the operation of the UK's terrorist asset freezing regime. We believe this is essential to ensure transparency and accountability of the regime. The Terrorist Asset-Freezing etc. Act 2010 has enshrined in law the commitment to report quarterly to Parliament on the operation of the regime mandated by UN Security Council Resolution 1373.

This report covers the period October to December 2010<sup>1</sup>. It is the last to cover the operation of the regime under the Terrorism (United Nations Measures) Order 2009, which was repealed on 17 December when the Terrorist Asset Freezing etc Act came into force and it also covers the first two weeks of the operation of the new Act.

The new Act strengthens civil liberties safeguards and makes the new regime fairer, more proportionate and more transparent.

A copy of the Act can be found on the HM Treasury's website:

[http://www.hm-treasury.gov.uk/fin\\_sanctions\\_terrorist.htm](http://www.hm-treasury.gov.uk/fin_sanctions_terrorist.htm)

This report also covers the operation of the UN Al Qaida and Taliban asset freezing regime.

As of 31 December 2010, a total of just under £280,000<sup>2</sup> of funds relating to terrorism were frozen in the UK. This covers funds frozen under the UK's domestic terrorist asset freezing regime, mandated by UN Security Council Resolution 1373, and also funds frozen under the UN Al-Qaida and Taliban asset freezing regime, mandated by UN Security Council Resolution 1267.

**(1) UK's domestic terrorist asset freezing regime**

As of 31 December 2010, a total of 91 accounts containing just under £140,000 were frozen in the UK under the domestic terrorist asset freezing regime mandated by UNSCR 1373.

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<sup>1</sup> The detail that can be provided to the House on a quarterly basis is subject to the need to avoid the identification, directly or indirectly, of personal or operationally sensitive information.

<sup>2</sup> This figure reflects the most updated account balances available and includes approximately \$64,000 of suspected terrorist funds frozen in the UK. This has been converted using exchange rates as of 12/01/11.

## **Operation of the Terrorism (United Nations Measures) Order 2009 (prior to 17 December 2010)**

### **Asset-freezing designations**

In the quarter October to December 2010, the Treasury gave no new directions under the 2009 Order.

### **Reviews under the 2009 Order**

The Treasury keeps domestic asset-freezing cases under review and completed 38 reviews in this quarter. As a result of these 38 reviews, 6 persons had their designations revoked.

### **Licensing**

Maintaining an effective licensing system is important to ensure the overall proportionality and fairness of the asset freezing regime, whether the individuals concerned are subject to an asset freeze in accordance with a UN or EU listing, or domestic terrorism legislation. A licensing framework is put in place for each person on a case-by-case basis. The key objective of the licensing system is to strike an appropriate balance between minimising the risk of diversion of funds to terrorism and meeting the human rights of affected persons and their families. Licences contain appropriate controls to protect against the risk of the diversion of funds for terrorist finance.

Four licences were issued this quarter in relation to 4 persons subject to an asset freeze under the 2009 Order.

In addition to issuing licences relating to a specific person, the Treasury may also issue general licences, which apply to all persons designated under a particular regime or regimes. Licences are granted where there is a legitimate need for such transactions to proceed and where they can proceed without giving rise to any risk of terrorist finance.

One general licence was issued this quarter to allow third parties to pay a designated person's legal expenses under both the Act and the Al Qaida and Taliban asset-freezing regime.

No licences were varied or revoked this quarter.

### **Legal Challenges**

Two legal challenges against designations made under the 2009 Order were ongoing in the last quarter.

## **Operation of the Terrorist Asset Freezing etc Act 2010 (after 17 December 2010)**

The Act contains a transitional provision that ensures that all designations and licences made under the 2009 Order remain valid as final designations under the Act until 17 March 2011. All UK asset freezes are therefore currently under review to consider whether they should be renewed under the new Act. The review process will be completed by 17 March 2011.

No new designations or licences were made under the powers of the Act between 17 December and the end of the quarter.

## The Independent Reviewer

Under the Act the Treasury is required to appoint an independent reviewer to review the operation of the domestic terrorist asset freezing regime. The independent reviewer will report on the first nine months of the regime and every 12 months thereafter.

The Treasury has decided to appoint David Anderson QC to the role of Independent Reviewer. He has recently been appointed by the Home Office as the independent reviewer of counter-terrorism legislation.

## **(2) UN Al-Qaida and Taliban Asset Freezing Regime**

The UN Al-Qaida and Taliban asset freezing regime is implemented in the UK through EC Regulation 881/2002. Enforcement measures are provided for in the UK's Al-Qaida and Taliban (Asset-Freezing) Regulations 2010.

As of 31 December 2010, a total of 112 accounts containing just under £140,000<sup>3</sup> were frozen in the UK under the Al Qaida and Taliban asset freezing regime.

### Designations

During this quarter, the EU added 5 people to its list made under EC Regulation 881/2002, implementing the UN Al-Qaida and Taliban asset freezing regime established under UNSCR 1267.

### Licences

One licence was issued this quarter in relation to one person subject to an asset freeze under the Al Qaida and Taliban asset freezing regime.

No specific licences were varied or revoked this quarter. The general licence referred to above also applies to the UNSCR 1267 regime.

### Proceedings

In the quarter October to December 2010, no proceedings were taken for breaches of the prohibitions of the 2009 Order, the Act or the Al-Qaida and Taliban (Asset-Freezing) Regulations.

## ***HM Treasury***

28 February 2011

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<sup>3</sup> Includes approximately \$64,000 of suspected terrorist funds in the UK.

**ANNEX 2**

**Quarterly Report (TAFAs 2010)**

**Jan – Mar 2011**

**Operation of the UK's Counter-Terrorist Asset Freezing Regime: 17 December 2010 to 31 March 2011**

**The Financial Secretary to the Treasury (Mark Hoban):** The Government is committed to reporting quarterly on the operation of the UK's terrorist asset freezing regime. We believe this is essential to ensure transparency and accountability of the regime. The Terrorist Asset-Freezing etc. Act 2010 has enshrined in law the commitment to report quarterly to Parliament on the operation of the UK's asset freezing regime mandated by UN Security Council Resolution 1373.

This is the first report under the 2010 Act and it covers the period from when the Act came into force on 17 December 2010 to 31 March 2011<sup>4</sup>. This report also covers the operation of the UN Al-Qaida and Taliban asset freezing regime.

As of 31 March 2011, a total of just under £230,000<sup>5</sup> of funds relating to terrorism were frozen in the UK. This covers funds frozen under the UK's domestic terrorist asset freezing regime, mandated by UN Security Council Resolution 1373, and also funds frozen under the UN Al-Qaida and Taliban asset freezing regime, mandated by UN Security Council Resolution 1267.

**(3) UK's domestic terrorist asset freezing regime under the Terrorist Asset-Freezing etc. Act 2010**

As of 31 March 2011, a total of 85 accounts containing just over £120,000 were frozen in the UK under the domestic terrorist asset freezing regime.

**Operation of the Terrorist Asset Freezing etc Act 2010**

**Asset-freezing designations**

In the period 17 December 2010 to 31 March 2011, the Treasury made one new designation under the 2010 Act. The final designation was made in respect of the military wing of Hizballah, including the External Security Organisation. This replaced a designation of the ESO only, extending the freeze to the entire military wing of Hizballah.

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<sup>4</sup> The detail that can be provided to the House on a quarterly basis is subject to the need to avoid the identification, directly or indirectly, of personal or operationally sensitive information.

<sup>5</sup> This figure reflects the most updated account balances available and includes approximately \$64,000 of suspected terrorist funds frozen in the UK. This has been converted using exchange rates as of 08/04/11.

## Reviews under the 2010 Act

The Act contains a transitional provision that ensured that all designations made under the Terrorism (United Nations Measures) Order 2009 which were in force at the time the Act came into force remained valid as final designations under the Act until 17 March 2011, whereupon they would lapse if not already renewed. All 57 UK domestic asset freezes were therefore reviewed during the quarter to see whether they should be renewed as final designations under the Act.

The review process was completed by 17 March 2011 and as a result of these 57 reviews:

- 37 persons<sup>6</sup> had their final designations renewed;
- three persons ceased to be designated and the asset freezes in respect of them were lifted;
- a further 16 persons and entities ceased to be designated under the Act but remain subject to asset freezes under EU or UN asset freezing regimes; and
- the designation of the Hizballah External Security Organisation was revoked and replaced with a new final designation of the military wing of Hizballah, which includes the ESO.

## Licensing

Maintaining a fair and effective licensing system is crucial to ensuring the overall proportionality of the asset freezing regime, whether the individuals concerned are subject to an asset freeze in accordance with a UN or EU listing, or domestic designation. A licensing framework is put in place for each person in the UK on a case-by-case basis. The key objective of the licensing system is to strike an appropriate balance between minimising the risk of diversion of funds to terrorism and implementing asset freezes in a proportionate way. Licences contain appropriate controls to protect against the risk of the diversion of funds for terrorist finance.

A total of twelve licences were issued this quarter under the 2010 Act in relation to four persons subject to an asset freeze. Of these, two were new licences, whereas the other ten were existing licences which were reissued under the Act so as to reference the current legislation rather than the Terrorism (United Nations Measures) Order 2009, under the authority of which they were originally issued.

In addition to issuing licences relating to a specific person, the Treasury may also issue general licences, which apply to all persons designated under a particular regime or regimes. Licences are granted where there is a legitimate need for such transactions to proceed and where they can proceed without giving rise to any risk of terrorist finance.

Six general licences that had been issued under the 2009 Order were reissued this quarter under the Act:

- Prisoners' funds– permitting the payment of funds to prison governors to be held and/or applied for the benefit of a designated person
- Provision of insurance to designated persons
- Legal Aid– licensing of payments of aid to designated persons' lawyers
- Provision of emergency goods & services under insurance policies\*
- Payment of designated persons' legal expenses by third parties

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<sup>6</sup> In this statement, "persons" is taken to refer to individuals and legal entities or bodies

\* During this quarter, this general licence was subsequently revoked and reissued with amendments.

#### Legal Challenges

Two legal challenges against designations made under the Terrorism (United Nations Measures) Order 2009 were ongoing in the last quarter.

#### **(4) UN Al-Qaida and Taliban Asset Freezing Regime**

The UN Al-Qaida and Taliban asset freezing regime, established under UNSCR 1267, is implemented in the UK by EC Regulation 881/2002. Enforcement measures are provided for in the UK's Al-Qaida and Taliban (Asset-Freezing) Regulations 2010.

As of 31 March 2011, a total of 83 accounts containing just under £110,000<sup>7</sup> were frozen in the UK under the Al-Qaida and Taliban asset freezing regime.

#### Designations

During this quarter, the EU added three people to the list in Annex I to EC Regulation 881/2002.

Six people were delisted during the quarter, three of whom had UK connections.

#### Licences

No individual licences were issued, varied or revoked in this quarter in relation to persons subject to an asset freeze under the Al-Qaida and Taliban asset freezing regime.

The general licences referred to above also apply to the UNSCR 1267 regime, with the exception of the general licence for insurance, the provision of which is not prohibited under the UNSCR 1267 regime.

#### **(5) Proceedings**

In the quarter to 31 March 2011, no proceedings were initiated in respect of breaches of the prohibitions of the Act or the Al-Qaida and Taliban (Asset-Freezing) Regulations.

***HM Treasury  
4 May 2011***

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<sup>7</sup> Includes approximately \$64,000 of suspected terrorist funds in the UK.



**ANNEX 3**

**Quarterly Report (TAFAs 2010)      Apr – Jun 2011**

**Operation of the UK's Counter-Terrorist Asset Freezing Regime: 1 April 2011 to 30 June 2011**

**The Financial Secretary to the Treasury (Mark Hoban):** Under the Terrorist Asset-Freezing etc. Act 2010 (the Act), the Treasury is required to report quarterly to Parliament on the operation of the UK's asset freezing regime mandated by UN Security Council Resolution 1373.

This is the second report under the Act and it covers the period from 1 April 2011 to 30 June 2011<sup>8</sup>.

This report also covers the operation of the UN Al-Qaida and Taliban asset freezing regime.

As of 30 June 2011, a total of just under £230,000<sup>9</sup> of funds were held frozen in the UK. This covers funds frozen under the UK's domestic terrorist asset freezing regime, mandated by UN Security Council Resolution 1373, and also funds frozen under the UN Al-Qaida and Taliban asset freezing regime, mandated by UN Security Council Resolution 1267.

**(1) UK's domestic terrorist asset freezing regime under the Terrorist Asset-Freezing etc. Act 2010**

As of 30 June 2011, a total of 85 accounts containing just over £120,000 were frozen in the UK under the domestic terrorist asset freezing regime. No new accounts were frozen during the quarter.

**Operation of the Terrorist Asset-Freezing etc. Act 2010**

**Asset freezing designations and reviews**

In the period 1 April 2011 to 30 June 2011, the Treasury made no new designations under the Act and did not conduct any reviews of existing designations.

**Licensing**

Maintaining a fair and effective licensing system is crucial to ensuring the overall proportionality of the asset freezing regime, whether the individuals concerned are subject to an asset freeze in accordance with a UN or EU listing, or domestic designation. A licensing framework is put in place for each person in the UK on a case-by-case basis. The key objective of the licensing system is to strike an appropriate balance between minimising the risk of diversion of funds to terrorism and implementing asset freezes in a proportionate way.

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<sup>8</sup> The detail that can be provided to the House on a quarterly basis is subject to the need to avoid the identification, directly or indirectly, of personal or operationally sensitive information.

<sup>9</sup> This figure reflects the most updated account balances available and includes approximately \$64,000 of suspected terrorist funds frozen in the UK. This has been converted using exchange rates as of 05/07/11.

Licences contain appropriate controls to protect against the risk of the diversion of funds for terrorist finance.

A total of four licences were issued this quarter under the Act in relation to three persons subject to an asset freeze.

In addition to issuing licences relating to a specific person, the Treasury may also issue general licences, which apply to all persons designated under a particular regime or regimes. Licences are granted where there is a legitimate need for such transactions to proceed and where they can proceed without giving rise to any risk of terrorist finance.

No general licences were issued this quarter under the Act.

### Legal Challenges

Two legal challenges against designations made under both the Terrorism (United Nations Measures) Order 2009 and the Act were ongoing in the quarter under review.

### **(2) UN Al-Qaida and Taliban asset freezing regime**

The UN Al-Qaida and Taliban asset freezing regime, established under UNSCR 1267, is implemented in the UK by Council Regulation (EC) No 881/2002. Enforcement measures are provided for in the UK's Al-Qaida and Taliban (Asset-Freezing) Regulations 2010.

In June, the UN adopted resolutions 1988 and 1989 which split the UNSCR 1267 Al-Qaida and Taliban regime into two separate regimes. The UN also introduced welcome new due process reforms including strengthening the role of the Ombudsperson and enhancing arrangements for reviewing designations.

This quarterly report covers the combined Al-Qaida and Taliban 1267 regime. Future reports will cover the operation in the UK of the 1989 Al-Qaida regime and the 1373 regime only, as the Taliban regime will be taken forward on a basis similar to other country sanctions.

As of 30 June 2011, a total of 84 accounts containing just under £110,000<sup>10</sup> were frozen in the UK under the Al-Qaida and Taliban asset freezing regime.

### Designations

During this quarter, the EU added three people to the list in Annex I to Council Regulation (EC) No 881/2002.

Six people were delisted during the quarter, none of whom had UK connections.

### Licences

Seven individual licences were issued in this quarter in relation to three persons subject to an asset freeze under the Al-Qaida and Taliban asset freezing regime. One of these licences was revoked.

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<sup>10</sup> Includes approximately \$64,000 of suspected terrorist funds in the UK.

**(3) Proceedings**

In the quarter to 30 June 2011, no proceedings were initiated in respect of breaches of the prohibitions of the Act or the Al-Qaida and Taliban (Asset-Freezing) Regulations.

**HM Treasury**

**18 July 2011**

**ANNEX 4**

**Quarterly Report (TAFA 2010)**

**Jul – Sep 2011**

**Operation of the UK's Counter-Terrorist Asset Freezing Regime: 1 July 2011 to 30 September 2011**

**The Financial Secretary to the Treasury (Mark Hoban):** Under the Terrorist Asset-Freezing etc. Act 2010 (the Act), the Treasury is required to report quarterly to Parliament on the operation of the UK's asset freezing regime mandated by UN Security Council Resolution 1373.

This is the third report under the Act and it covers the period from 1 July 2011 to 30 September 2011<sup>11</sup>.

This report also covers the UK implementation of the UN Al-Qaida asset freezing regime.

As of 30 September 2011, a total of just over £200,000<sup>12</sup> of funds were held frozen in the UK. This covers funds frozen under the UK's domestic terrorist asset freezing regime, mandated by UN Security Council Resolution 1373, and also funds frozen under the UN Al-Qaida asset freezing regime, mandated by UN Security Council Resolution 1989.

**(4) UK's domestic terrorist asset freezing regime under the Terrorist Asset-Freezing etc. Act 2010**

As of 30 September 2011, a total of 84 accounts containing just over £100,000 were frozen in the UK under the domestic terrorist asset freezing regime. No new accounts were frozen during the quarter.

**Operation of the Terrorist Asset Freezing etc. Act 2010**

**Asset-freezing designations and reviews**

In the period from 1 July 2011 to 30 September 2011, the Treasury made no new designations under the Act. No reviews of existing designations were completed during the quarter.

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<sup>11</sup> The detail that can be provided to the House on a quarterly basis is subject to the need to avoid the identification, directly or indirectly, of personal or operationally sensitive information.

<sup>12</sup> This figure reflects the most up-to-date account balances available and includes approximately \$64,000 of suspected terrorist funds frozen in the UK. This has been converted using exchange rates as of 05/10/11.

## Licensing

A total of ten licences were issued this quarter under the Act in relation to six persons subject to an asset freeze.

In addition to issuing licences relating to a specific person, the Treasury may also issue general licences, which apply to all persons designated under a particular regime or regimes.

No general licences were issued this quarter under the Act.

## Legal Challenges

Two legal challenges against designations made under both the Terrorism (United Nations Measures) Order 2009 and the Act were ongoing in the quarter covered by this report.

### **(5) UN Al-Qaida Asset Freezing Regime**

The UN Al-Qaida asset freezing regime, established under UNSCR 1267, is implemented in the UK by Council Regulation (EC) No 881/2002. Following the split of the UNSCR 1267 Al-Qaida and Taliban regime into two separate regimes in June, this quarterly report will cover just the UN Al-Qaida regime mandated by UNSCR 1989.

As of 30 September 2011, a total of 41 accounts containing just over £100,000<sup>13</sup> were frozen in the UK under the Al-Qaida asset freezing regime. The unfreezing of 43 accounts since the previous quarter was a result of a number of delistings by the UN (see the listings section below).

## Listings

During this quarter, the EU added six people and two entities to the list in Annex I to Council Regulation (EC) No 881/2002.

Six people and three entities were delisted during the quarter. Of these, five individuals and three entities had UK connections.

## Licences

One individual licence was issued in this quarter in relation to a person subject to an asset freeze under the Al-Qaida asset freezing regime.

Seventeen licences were revoked in respect of the five individuals who were delisted.

### **(6) Proceedings**

In the quarter to 30 September 2011, no proceedings were initiated in respect of breaches of the prohibitions of the Act or the Al-Qaida and Taliban (Asset-Freezing) Regulations 2010.

## **HM Treasury**

### **18 October 2011**

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<sup>13</sup> Includes approximately \$64,000 of suspected terrorist funds in the UK.

## **ANNEX 5**

**Designations (EU list), Sep 2011**



List of those designated at the end of the period under review under Tafa 2010 section 1(B)  
– taken from the Council Decision 687/2011

## 1. PERSONS

1. ABOU, Rabah Naami (a.k.a. Naami Hamza, a.k.a. Mihoubi Faycal, a.k.a. Fellaah Ahmed, a.k.a. Dafri Rème Lahdi), born 1.2.1966 in Algiers (Algeria) — member of ‘al-Takfir’ and ‘al-Hijra’
2. ABOUD, Maisi (a.k.a. The Swiss Abderrahmane), born 17.10.1964 in Algiers (Algeria), — member of ‘al-Takfir’ and ‘al-Hijra’
3. AL-NASSER, Abdelkarim Hussein Mohamed, born in Al Ihsa (Saudi Arabia), citizen of Saudi Arabia
4. AL YACOUB, Ibrahim Salih Mohammed, born 16.10.1966 in Tarut (Saudi Arabia), citizen of Saudi Arabia
5. ARIOUA, Kamel (a.k.a. Lamine Kamel), born 18.8.1969 in Costantine (Algeria) — member of ‘al-Takfir’ and ‘al-Hijra’
6. ASLI, Mohamed (a.k.a. Dahmane Mohamed), born 13.5.1975 in Ain Taya (Algeria) — member of ‘al-Takfir’ and ‘al-Hijra’
7. ASLI, Rabah, born 13.5.1975 in Ain Taya (Algeria) — member of ‘al-Takfir’ and ‘al-Hijra’
8. BOUYERI, Mohammed (a.k.a. Abu ZUBAIR, a.k.a. SOBIAR, a.k.a. Abu ZOUBAIR), born 8.3.1978 in Amsterdam (The Netherlands) — member of the ‘Hofstadgroep’
9. DARIB, Nouredine (a.k.a. Carreto, a.k.a. Zitoun Mourad), born 1.2.1972 in Algeria — member of ‘al-Takfir’ and ‘al-Hijra’
10. DJABALI, Abderrahmane (a.k.a. Touil), born 1.6.1970 in Algeria — member of ‘al-Takfir’ and ‘al-Hijra’
11. EL FATMI, Nouredine (a.k.a. Nouriddin EL FATMI, a.k.a. Nouriddine EL FATMI, a.k.a. Nouredine EL FATMI, a.k.a. Abu AL KA'E KA'E, a.k.a. Abu QAE QAE, a.k.a. FOUAD, a.k.a. FZAD, a.k.a. Nabil EL FATMI, a.k.a. Ben MOHAMMED, a.k.a. Ben Mohand BEN LARBI, a.k.a. Ben Driss Muhand IBN LARBI, a.k.a. Abu TAHAR, a.k.a. EGGIE), born 15.8.1982 in Midar (Morocco), passport (Morocco) No N829139 — member of the ‘Hofstadgroep’
12. FAHAS, Sofiane Yacine, born 10.9.1971 in Algiers (Algeria) — member of ‘al-Takfir’ and ‘al-Hijra’
13. IZZ-AL-DIN, Hasan (a.k.a. GARBAYA, Ahmed, a.k.a. SA-ID, a.k.a. SALWWAN, Samir), Lebanon, born 1963 in Lebanon, citizen of Lebanon
14. MOHAMMED, Khalid Shaikh (a.k.a. ALI, Salem, a.k.a. BIN KHALID, Fahd Bin Adballah, a.k.a. HENIN, Ashraf Refaat Nabith, a.k.a. WADOOD, Khalid Adbul), born 14.4.1965 or 1.3.1964 in Pakistan, passport No 488555
15. MOKTARI, Fateh (a.k.a. Ferdi Omar), born 26.12.1974 in Hussein Dey (Algeria) — member of ‘al-Takfir’ and ‘al-Hijra’
16. NOUARA, Farid, born 25.11.1973 in Algiers (Algeria) — member of ‘al-Takfir’ and ‘al-Hijra’
17. RESSOUS, Hoari (a.k.a. Hallasa Farid), born 11.9.1968 in Algiers (Algeria) — member of ‘al-Takfir’ and ‘al-Hijra’
18. SEDKAOUI, Nouredine (a.k.a. Nounou), born 23.6.1963 in Algiers (Algeria) — member of ‘al-Takfir’ and ‘al-Hijra’
19. SELMANI, Abdelghani (a.k.a. Gano), born 14.6.1974 in Algiers (Algeria) — member of ‘al-Takfir’ and ‘al-Hijra’

20. SENOUCI, Sofiane, born 15.4.1971 in Hussein Dey (Algeria) — member of 'al-Takfir' and 'al-Hijra'
21. TINGUALI, Mohammed (a.k.a. Mouh di Kouba), born 21.4.1964 in Blida (Algeria) — member of 'al-Takfir' and 'al-Hijra'
22. WALTERS, Jason Theodore James (a.k.a. Abdullah, a.k.a. David), born 6.3.1985 in Amersfoort (The Netherlands), passport (The Netherlands) No NE8146378 — member of the 'Hofstadgroep'EN

## 2. GROUPS AND ENTITIES

1. 'Abu Nidal Organisation' — 'ANO' (a.k.a. 'Fatah Revolutionary Council', a.k.a. 'Arab Revolutionary Brigades', a.k.a. 'Black September', a.k.a. 'Revolutionary Organisation of Socialist Muslims')
2. 'Al-Aqsa Martyrs' Brigade'
3. 'Al-Aqsa e.V.'
4. 'Al-Takfir' and 'Al-Hijra'
5. 'Babbar Khalsa'
6. 'Communist Party of the Philippines', including 'New People's Army' — 'NPA', Philippines
7. 'Gama'a al-Islamiyya' (a.k.a. 'Al-Gama'a al-Islamiyya') ('Islamic Group' — 'IG')
8. 'İslami Büyük Doğu Akıncılar Cephesi' — 'IBDA-C' ('Great Islamic Eastern Warriors Front')
9. 'Hamás', including 'Hamás-Izz al-Din al-Qassem'
10. 'Hizbul Mujahideen' — 'HM'
11. 'Hofstadgroep'
12. 'Holy Land Foundation for Relief and Development'
13. 'International Sikh Youth Federation' — 'ISYF'
14. 'Khalistan Zindabad Force' — 'KZF'
15. 'Kurdistan Workers Party' — 'PKK' (a.k.a. 'KADEK', a.k.a. 'KONGRA-GEL')
16. 'Liberation Tigers of Tamil Eelam' — 'LTTE'
17. 'Ejército de Liberación Nacional' ('National Liberation Army')
18. 'Palestinian Islamic Jihad' — 'PIJ'
19. 'Popular Front for the Liberation of Palestine' — 'PFLP'
20. 'Popular Front for the Liberation of Palestine — General Command' (a.k.a. 'PFLP — General Command')
21. 'Fuerzas armadas revolucionarias de Colombia' — 'FARC' ('Revolutionary Armed Forces of Colombia')
22. 'Devrimci Halk Kurtuluş Partisi-Cephesi' — 'DHKP/C' (a.k.a. 'Devrimci Sol' ('Revolutionary Left'), a.k.a. 'Dev Sol') ('Revolutionary People's Liberation Army/Front/Party')
23. 'Sendero Luminoso' — 'SL' ('Shining Path')
24. 'Stichting Al Aqsa' (a.k.a. 'Stichting Al Aqsa Nederland', a.k.a. 'Al Aqsa Nederland')
25. 'Teyrbazen Azadiya Kurdistan' — 'TAK' (a.k.a. 'Kurdistan Freedom Falcons', a.k.a. 'Kurdistan Freedom Hawks')

## **ANNEX 6**

**Designations (Treasury list), Sep 2011**

## **REGIME: Terrorism and Terrorist Financing – UK Listings**

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### **Status: Asset Freeze Targets**

#### **INDIVIDUALS**

1. **Name 6:** ABDULLAH **1:** BILAL **2:** TALAL **3:** ABDUL **4:** SAMAD **5:** n/a.  
**DOB:** (1) 24/08/1979. (2) 27/08/1979. **a.k.a:** ABDULLA, Bilal **Nationality:** British **Passport Details:** 702172116 (British). Issued 19 Aug 1998 **Address:** (1) Paisley, United Kingdom (previous address), PA2. (2) Houston, United Kingdom (previous address), PA6. (3) Greenock, United Kingdom (previous address), PA16. (4) Cambridge, United Kingdom (previous address), CB4. (5) Cambridge, United Kingdom (previous address), CB2. (6) Cambridge, United Kingdom (previous address), CB1. **Other Information:** UK listing only. Male. Sentenced to two terms of life imprisonment in Dec 2008. In custody in the UK (as at Mar 2011). **Listed on:** 10/07/2007 **Last Updated:** 10/03/2011 **Group ID:** 9149.
2. **Name 6:** AHMED **1:** HABIB **2:** n/a **3:** n/a **4:** n/a **5:** n/a.  
**DOB:** 15/11/1979. **Address:** Manchester, United Kingdom, M8. **Other Information:** UK listing only. Male. In custody in the UK (as at Mar 2011). **Listed on:** 31/01/2007 **Last Updated:** 17/03/2011 **Group ID:** 9013.
3. **Name 6:** AL-ALAMI **1:** IMAD **2:** KHALIL **3:** n/a **4:** n/a **5:** n/a.  
**DOB:** --/--/1956. **POB:** Gaza **Other Information:** UK listing only. Male. Senior HAMAS official. **Listed on:** 24/03/2004 **Last Updated:** 17/03/2011 **Group ID:** 7885.
4. **Name 6:** ALI **1:** ABDULA **2:** AHMED **3:** n/a **4:** n/a **5:** n/a.  
**DOB:** 10/10/1980. **a.k.a:** (1) ALI, Abdullah, Ahmed (2) ALI, Ahmed (3) ALI, Ahmed, Abdullah (4) KHAN, Ahmed, Ali **Address:** Walthamstow, London, United Kingdom (previous address). **Other Information:** UK listing only. Male. Sentenced to life imprisonment in Sept 2009. In custody in the UK (as at Mar 2011). **Listed on:** 11/08/2006 **Last Updated:** 10/03/2011 **Group ID:** 8959.
5. **Name 6:** AL-NASSER **1:** ABDELKARIM **2:** HUSSEIN **3:** MOHAMED **4:** n/a **5:** n/a.  
**POB:** Al Ihsa, Saudi Arabia **Nationality:** Saudi Arabia citizenship **Other Information:** Both UK listing and EU listing. **Listed on:** 12/10/2001 **Last Updated:** 17/03/2011 **Group ID:** 7008.
6. **Name 6:** AL-YACCOUB **1:** IBRAHIM **2:** SALIH **3:** MOHAMMED **4:** n/a **5:** n/a.  
**DOB:** 16/10/1966. **POB:** Tarut, Saudi Arabia **Nationality:** Saudi Arabia citizenship **Other Information:** Both UK listing and EU listing. **Listed on:** 12/10/2001 **Last Updated:** 17/03/2011 **Group ID:** 7015.
7. **Name 6:** BHUTA **1:** ISMAIL **2:** VALI **3:** n/a **4:** n/a **5:** n/a.  
**DOB:** 01/06/1944. **POB:** Gujerat, India **a.k.a:** BHUTA, Mohammed, Ismail, Vali **Nationality:** British **Passport Details:** 500283001 (British). Issued in 2002 **Address:** Forest Gate, London, United Kingdom, E7. **Other Information:** UK listing only. Male. Resident in the UK. **Listed on:** 18/09/2009 **Last Updated:** 16/03/2011 **Group ID:** 10954.
8. **Name 6:** BOZKUR **1:** SELMAN **2:** n/a **3:** n/a **4:** n/a **5:** n/a.  
**DOB:** 21/12/1971. **POB:** Baykan, Turkey **Nationality:** Turkish **Other Information:** UK listing only. Male. Not known to be in the UK. **Listed on:** 23/01/2008 **Last Updated:** 17/03/2011 **Group ID:** 9227.
9. **Name 6:** HAMDAN **1:** USAMA **2:** n/a **3:** n/a **4:** n/a **5:** n/a.  
**DOB:** --/--/1964. **Other Information:** UK listing only. Male. Senior HAMAS official. Based in Haret Hreik, Lebanon. **Listed on:** 24/03/2004 **Last Updated:** 17/03/2011 **Group ID:** 7886.
10. **Name 6:** HUSSAIN **1:** NABEEL **2:** n/a **3:** n/a **4:** n/a **5:** n/a.  
**DOB:** 10/03/1984. **Address:** (1) London, United Kingdom, E4. (2) Ilford, Essex, United Kingdom, IG1. **Other Information:** UK listing only. Male. In custody in the UK (as at Mar 2011). **Listed on:** 11/08/2006 **Last Updated:** 10/03/2011 **Group ID:** 8961.
11. **Name 6:** HUSSAIN **1:** TANVIR **2:** n/a **3:** n/a **4:** n/a **5:** n/a.  
**DOB:** 21/02/1981. **Address:** Leyton, London, United Kingdom (previous address), E10. **Other Information:** UK listing only. Male. Sentenced to life imprisonment in Sept 2009. In custody in the UK (as at Mar 2011). **Listed on:** 11/08/2006 **Last Updated:** 10/03/2011 **Group ID:** 8956.
12. **Name 6:** IQBAL **1:** ZAHOOR **2:** n/a **3:** n/a **4:** n/a **5:** n/a.  
**DOB:** 28/08/1977. **POB:** Birmingham, United Kingdom **Nationality:** British **Passport Details:** 033344264 (British) **Address:** Birmingham, United Kingdom (previous address), B44. **Other**

**Information:** UK listing only. Male. In custody in the UK (as at Mar 2011). **Listed on:** 02/03/2007 **Last Updated:** 03/05/2011 **Group ID:** 9030.

13. **Name 6:** ISLAM **1:** UMAR **2:** n/a **3:** n/a **4:** n/a **5:** n/a.  
**DOB:** 23/04/1978. **a.k.a:** (1) BRIAN, Umar (2) ISLAM, Omar (3) YOUNG, Brian, Oliver **Address:** High Wycombe, Buckinghamshire, United Kingdom (previous address). **Other Information:** UK listing only. Male. Sentenced to life imprisonment in Sept 2009. In custody in the UK (as at Mar 2011). **Listed on:** 11/08/2006 **Last Updated:** 10/03/2011 **Group ID:** 8957.
14. **Name 6:** IZZ-AL-DIN **1:** HASAN **2:** n/a **3:** n/a **4:** n/a **5:** n/a.  
**DOB:** --/--/1963. **POB:** Lebanon **a.k.a:** (1) GARBAYA, Ahmed (2) SALWWAN, Samir **Nationality:** Lebanon citizenship **Address:** Lebanon. **Other Information:** Both UK listing and EU listing. Also referred to as Sa-id. **Listed on:** 12/10/2001 **Last Updated:** 17/03/2011 **Group ID:** 7146.
15. **Name 6:** KHAN **1:** PARVIZ **2:** n/a **3:** n/a **4:** n/a **5:** n/a.  
**DOB:** (1) 17/10/1970. (2) 16/10/1970. **POB:** (1) Mirpur (2) Derby, (1) Pakistan (2) United Kingdom **Nationality:** British **Passport Details:** 459027340 (British) **Address:** Birmingham, United Kingdom (previous address), B8. **Other Information:** UK listing only. Male. Sentenced to life imprisonment in Feb 2008. In custody in the UK (as at Mar 2011). **Listed on:** 02/03/2007 **Last Updated:** 03/05/2011 **Group ID:** 9026.
16. **Name 6:** KHAN **1:** WAHEED **2:** ARAFAT **3:** n/a **4:** n/a **5:** n/a.  
**DOB:** 18/05/1981. **Address:** London, United Kingdom, E17. **Other Information:** UK listing only. Male. In custody in the UK (as at Mar 2011). **Listed on:** 11/08/2006 **Last Updated:** 10/03/2011 **Group ID:** 8948.
17. **Name 6:** KHATIB **1:** OSMAN **2:** ADAM **3:** n/a **4:** n/a **5:** n/a.  
**DOB:** 07/12/1986. **a.k.a:** KHATIB, Adam, Osman **Address:** London, United Kingdom (previous address), E17. **Other Information:** UK listing only. Male. Sentenced to life imprisonment in Dec 2009. In custody in the UK (as at Mar 2011). **Listed on:** 11/08/2006 **Last Updated:** 10/03/2011 **Group ID:** 8952.
18. **Name 6:** MARZOUK **1:** MUSA **2:** ABU **3:** n/a **4:** n/a **5:** n/a.  
**Title:** Dr **DOB:** 09/02/1951. **POB:** Gaza, Egypt **a.k.a:** (1) ABU MARZOOK, Mousa, Mohammed (2) ABU-MARZUQ, Musa (3) ABU-MARZUQ, Sa'id (4) ABU-UMAR (5) MARZOOK, Mousa, Mohamed, Abou (6) MARZUK, Musa, Abu **Passport Details:** 92/664 (Egypt) **Other Information:** UK listing only. Male. Senior HAMAS official. **Listed on:** 24/03/2004 **Last Updated:** 17/03/2011 **Group ID:** 7888.
19. **Name 6:** MASTAFA **1:** GULAM **2:** n/a **3:** n/a **4:** n/a **5:** n/a.  
**DOB:** 02/05/1962. **POB:** Sylhet, Bangladesh **Nationality:** (1) British (2) Bangladeshi **Passport Details:** 301106302 (British) **Address:** Birmingham, United Kingdom, B11. **Other Information:** UK listing only. Male. Not in the UK (as at Mar 2011). **Listed on:** 23/04/2007 **Last Updated:** 17/03/2011 **Group ID:** 9086.
20. **Name 6:** MISHAAL **1:** KHALID **2:** n/a **3:** n/a **4:** n/a **5:** n/a.  
**DOB:** --/--/1956. **POB:** Silwad, Ramallah, West Bank (Palestinian Authority) **Other Information:** UK listing only. Male. Senior HAMAS official. Based in Damascus, Syria. **Listed on:** 24/03/2004 **Last Updated:** 17/03/2011 **Group ID:** 7887.
21. **Name 6:** MOHAMMED **1:** KHALID **2:** SHAIKH **3:** n/a **4:** n/a **5:** n/a.  
**DOB:** (1) 01/03/1964. (2) 14/04/1965. **POB:** (1) Kuwait (2) Pakistan **a.k.a:** (1) ALI, Salem (2) BIN KHALID, Fahd, Bin Adballah (3) HENIN, Ashraf, Refaat, Nabith (4) MOHAMMED, Khalid, Sheikh (5) WADOOD, Khalid, Abdul **Nationality:** Kuwaiti citizenship **Passport Details:** 488555 **Other Information:** Both UK listing and EU listing. In US custody (as at Mar 2011). **Listed on:** 12/10/2001 **Last Updated:** 17/03/2011 **Group ID:** 6994.
22. **Name 6:** MOHAMMED **1:** RAMZI **2:** n/a **3:** n/a **4:** n/a **5:** n/a.  
**DOB:** 18/08/1981. **POB:** Somalia **a.k.a:** MOHAMED, Ramzi **Nationality:** Somali **Address:** (1) London, United Kingdom (previous address), W10. (2) London, United Kingdom (previous address), SW5. (3) London, United Kingdom (previous address), SW10. (4) London, United Kingdom (previous address), SE1. (5) Hayes, Middlesex, United Kingdom (previous address). **Other Information:** UK listing only. Male. Convicted of conspiracy to murder. Sentenced to life imprisonment in July 2007. In custody in the UK (as at March 2011). **Listed on:** 05/08/2005 **Last Updated:** 03/05/2011 **Group ID:** 8702.
23. **Name 6:** MUHAMMAD **1:** SULTAN **2:** n/a **3:** n/a **4:** n/a **5:** n/a.  
**DOB:** (1) 24/09/1984. (2) 29/09/1984. **a.k.a:** MOHAMMED, Sultan **Address:** Bradford, United Kingdom, BD1. **Other Information:** UK listing only. Male. **Listed on:** 20/07/2009 **Last Updated:** 17/03/2011 **Group ID:** 10921.
24. **Name 6:** OMAR **1:** YASSIN **2:** n/a **3:** n/a **4:** n/a **5:** n/a.  
**DOB:** 01/01/1981. **a.k.a:** (1) HASSAN, Yassin, Omar (2) HASSAN, Yessan (3) OMAR,

- Yasim (4) OMAR, Yasin (5) OMAR, Yassin, Hassan **Nationality:** Somali **Address:** London, United Kingdom (previous address), N11. **Other Information:** UK listing only. Male. Convicted of conspiracy to murder. Sentenced to life imprisonment in July 2007. In custody in the UK (as at March 2011). **Listed on:** 05/08/2005 **Last Updated:** 03/05/2011 **Group ID:** 8699.
25. **Name 6:** OSMAN **1:** HUSSEIN **2:** n/a **3:** n/a **4:** n/a **5:** n/a.  
**DOB:** (1) 23/07/1978. (2) 27/07/1978. **a.k.a.:** (1) ADDUS, Hamdi, Issac (2) ADUS, Hamdi, Issac (3) OSMAN, Hussain (4) OSMAN, Hussein, Ahmed (5) OSMAN, Hussien, Ahmed **Nationality:** (1) Eritrean (2) Somali **Address:** (1) London, United Kingdom (previous address), SW9. (2) London, United Kingdom (previous address), SW2. (3) London, United Kingdom (previous address), SW16. **Other Information:** UK listing only. Male. Convicted of conspiracy to murder. Sentenced to life imprisonment in July 2007. In custody in the UK (as at March 2011). **Listed on:** 05/08/2005 **Last Updated:** 03/05/2011 **Group ID:** 8700.
26. **Name 6:** RAHIM **1:** ZANA **2:** ABDUL **3:** RAHMAN **4:** n/a **5:** n/a.  
**DOB:** (1) 01/01/1983. (2) 22/11/1982. **POB:** Kirkuk, Iraq **a.k.a.:** (1) RAHIN, Zana, Abdul (2) RAHINI, Zana, Abdul, Rahman (3) RAHMAN, Zana, Abdul **Nationality:** Iraqi Kurd **Address:** (1) Huddersfield, West Yorkshire, United Kingdom (previous address), HD5. (2) Huddersfield, West Yorkshire, United Kingdom (previous address), HD1. (3) Carlton, Nottingham, United Kingdom, NG4. (4) Camberwell, London, United Kingdom (previous address), SE5. **Other Information:** UK listing only. Male. Resident in the UK. **Listed on:** 31/03/2009 **Last Updated:** 16/03/2011 **Group ID:** 10833.
27. **Name 6:** SAID **1:** MUKTAR **2:** MOHAMMED **3:** n/a **4:** n/a **5:** n/a.  
**DOB:** (1) 24/01/1978. (2) 24/01/1976. **POB:** Eritrea **a.k.a.:** (1) IBRAHIM, Muktar, Said (2) IBRAHIM, White, Muktar, Said (3) SAID, Mukhtar (4) SAID, Mukhtar, Ibrahim (5) SAYID, Muktar (6) SAYID, Muktar, Mohammed **Nationality:** Eritrean (British citizen) **Address:** (1) Stanmore, Middlesex, United Kingdom (previous address), HA7. (2) London, United Kingdom (previous address), N16. **Other Information:** UK listing only. Male. Convicted of conspiracy to murder. Sentenced to life imprisonment in July 2007. In custody in the UK (as at March 2011). **Listed on:** 05/08/2005 **Last Updated:** 03/05/2011 **Group ID:** 8701.
28. **Name 6:** SARWAR **1:** ASSAD **2:** n/a **3:** n/a **4:** n/a **5:** n/a.  
**DOB:** 24/05/1980. **a.k.a.:** SARWAR, Ali, Assad **Address:** High Wycombe, Buckinghamshire, United Kingdom (previous address), HP13. **Other Information:** UK listing only. Male. Sentenced to life imprisonment in Sept 2009. In custody in the UK (as at Mar 2011). **Listed on:** 11/08/2006 **Last Updated:** 10/03/2011 **Group ID:** 8958.
29. **Name 6:** SAVANT **1:** IBRAHIM **2:** n/a **3:** n/a **4:** n/a **5:** n/a.  
**DOB:** 19/12/1980. **a.k.a.:** SAVANT, Oliver **Address:** London, United Kingdom, E17. **Other Information:** UK listing only. Male. In custody in the UK (as at Mar 2011). **Listed on:** 11/08/2006 **Last Updated:** 10/03/2011 **Group ID:** 8951.
30. **Name 6:** ZAMAN **1:** WAHEED **2:** n/a **3:** n/a **4:** n/a **5:** n/a.  
**DOB:** 27/05/1984. **Address:** London, United Kingdom, E17. **Other Information:** UK listing only. Male. In custody in the UK (as at Mar 2011). **Listed on:** 11/08/2006 **Last Updated:** 10/03/2011 **Group ID:** 8945.

## ENTITIES

- Organisation Name:** BASQUE FATHERLAND AND LIBERTY  
**a.k.a.:** (1) ETA (2) Euzkadi Ta Askatasuna **Other Information:** UK listing only. **Listed on:** 02/11/2001 **Last Updated:** 17/03/2011 **Group ID:** 7083.
- Organisation Name:** EJERCITO DE LIBERACION NACIONAL (ELN)  
**a.k.a.:** National Liberation Army **Other Information:** Both UK listing and EU listing. **Listed on:** 02/11/2001 **Last Updated:** 17/03/2011 **Group ID:** 7364.
- Organisation Name:** FUERZAS ARMADAS REVOLUCIONARIAS DE COLOMBIA  
**a.k.a.:** (1) FARC (2) Revolutionary Armed Forces of Colombia **Other Information:** Both UK listing and EU listing. **Listed on:** 02/11/2001 **Last Updated:** 17/03/2011 **Group ID:** 7418.
- Organisation Name:** HIZBALLAH MILITARY WING, INCLUDING EXTERNAL SECURITY ORGANISATION  
**Other Information:** UK listing only. **Listed on:** 02/11/2001 **Last Updated:** 17/03/2011 **Group ID:** 7177.
- Organisation Name:** HOLY LAND FOUNDATION FOR RELIEF AND DEVELOPMENT  
**Other Information:** Both UK listing and EU listing. **Listed on:** 06/12/2001 **Last Updated:** 17/03/2011 **Group ID:** 7185.
- Organisation Name:** POPULAR FRONT FOR THE LIBERATION OF PALESTINE - GENERAL COMMAND

**a.k.a:** PFLP - General Command **Other Information:** Both UK listing and EU listing. **Listed on:** 02/11/2001 **Last Updated:** 17/03/2011 **Group ID:** 7399.

7. **Organisation Name:** POPULAR FRONT FOR THE LIBERATION OF PALESTINE (PFLP)  
**Other Information:** Both UK listing and EU listing. **Listed on:** 02/11/2001 **Last Updated:** 17/03/2011  
**Group ID:** 7401.

8. **Organisation Name:** SENDERO LUMINOSO (SL)  
**a.k.a:** Shining Path **Other Information:** Both UK listing and EU listing. **Listed on:** 02/11/2001 **Last Updated:** 17/03/2011 **Group ID:** 7440.









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