



HM TREASURY

Operation of the Terrorist Asset-Freezing Etc. Act 2010:

response to the independent reviewer's first report



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Asset-Freezing Etc. Act 2010:
response to the independent reviewer's
first report

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

February 2012

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Foreword

I welcome the report that David Anderson QC has written on the first nine months of operation of the Terrorist Asset-Freezing etc. Act 2010 (“TFAFA 2010”).

David Anderson has undertaken a commendably thorough review of the asset-freezing legislative framework, the designation reviews carried out since TFAFA 2010 came into force and the licensing work for the period of the review. The report he has written is a comprehensive and accessible overview of the domestic asset-freezing regime that we have established to implement the UK’s obligations under UN Security Council Resolution 1373 to freeze terrorist assets. The report serves both as an excellent introduction to our legislation and to the operation of the asset-freezing regime. It also captures the many challenges we face on a daily basis in implementing the regime.

I welcome the recommendations which David Anderson has made to our consideration of the grounds for designation; to formalise our review procedures and the input we receive from relevant departments and agencies; to increase the transparency of the operation of TFAFA 2010; to engage in dialogue with the financial sector about ways of simplifying the licensing regime; and provide guidance for designated persons.

This document sets out the Government’s response to each of the recommendations, including the steps we will be taking to implement them. The response has been agreed with departments and agencies with an interest in asset-freezing.

A handwritten signature in black ink that reads "James Sassoon". The signature is written in a cursive, flowing style with a period at the end.

Lord Sassoon

Commercial Secretary to the Treasury

Response to Recommendations

Grounds for designation

Recommendation 1

The Treasury should issue and present to Parliament a statement of policy regarding its approach to designation under TAFE 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).

1.1 The Treasury considers very carefully and thoroughly all designations it makes to ensure they meet the statutory requirements set out in the Terrorist Asset-Freezing etc. Act 2010 (TAFE 2010).

1.2 The Treasury has taken the opportunity to review the factors it takes into account when assessing asset freezing designations. The Treasury accepts this recommendation and is publishing these factors in a Designation Policy Statement. The Statement can be found in full in the Annex to this document. This sets out factors considered by the Treasury in determining whether the statutory requirements are met and whether to exercise its discretion to designate a person. The Statement also confirms that proportionality is considered in the exercise of the Treasury's discretion.

Procedures for designation and review

Recommendation 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.

Recommendation 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).

1.3 These recommendations are dealt with together as they are closely linked.

1.4 The Treasury sees the value in establishing an asset freezing review group along the lines of that used by the Home Office to review proscribed organisations. The Treasury has agreed with other counter-terrorism departments and agencies that the role of the Asset Freezing Working Group (“AFWG”) should be expanded to include reviews of existing and proposed designations. An Asset Freezing Review sub-Group will meet at intervals during the year to review existing designations against the criteria published in the Designation Policy Statement (see the Annex). The Treasury anticipates that the Asset Freezing Review sub-Group will begin to meet in the second quarter of 2012.

1.5 The Treasury also agrees that operational partners should advise on other measures, such as prosecution and forfeiture of assets, when the Treasury considers a designation proposal or review a case. The Government has a comprehensive framework of tools and powers, including a number of measures to identify, investigate and disrupt the financing of terrorism. While these are all important tools, it is important to note that none offer the same comprehensive level of protection against terrorist financing as an asset freeze. In particular, none of these *preventatively* freezes assets or places restrictions on third parties making funds available to or for the benefit of designated terrorists. It is important that the Treasury does not circumscribe the ability of operational partners to use an asset freeze alongside other tools where the case requires it.

Recommendation 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.

1.6 The Treasury sees significant merit in this approach and is liaising with the National Offender Management Service (NOMS) and other interested agencies about how best to integrate asset freeze designation reviews with the Multi-Agency Public Protection Approach (MAPPA) process.

Transparency

Recommendation 5

A list should be available on the Treasury's website of those who are designated under TAFE 2010.

1.7 The Treasury recognises that the current list of those persons subject to an asset freeze under the UK and EU counter terrorism regimes, which it publishes as part of the 'Consolidated List of financial sanctions targets', does not clearly identify under which regime each designation is made. The Treasury has, therefore, decided to include this information in the quarterly reports to Parliament on the operation of the terrorist asset-freezing regime. These reports will be available in Hansard and on the Treasury website from 8 February 2012.

Recommendation 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.

1.8 The Treasury has published quarterly reports on the operation of the terrorist asset-freezing regime and laid them before Parliament since 2006. Those reports incorporated some of the information set out in recommendation 6. The Treasury has reviewed the format and content of the report for the last quarter of 2011 and expanded it to incorporate the additional information recommended by the Independent Reviewer, save for information on nationality. The Treasury will work towards providing information on the nationality of designated persons in future reports. The report for the last quarter of 2011 will be laid before Parliament on 8 February and be available on the Treasury website (see www.hm-treasury.gov.uk/fin_sanctions_terrorist.htm).

Licensing and compliance

Recommendation 7

Continuing efforts should be made to draft individual licences with the maximum flexibility appropriate to the case.

1.9 The Treasury welcomes the Independent Reviewer's recognition of the Treasury's efforts to issue individual licences which are effective and appropriate. Each individual licence request is assessed against a risk framework to ensure that suitable controls are in place to address any risks of diversion of funds to terrorism, while ensuring that these controls are limited to those necessary to manage that risk. It is an important balance to maintain.

1.10 The Treasury will continue to consider how licences can be made as flexible as possible in light of the risk presented by the designated person.

Recommendation 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).

1.11 The Treasury acknowledges the considerable efforts made by financial institutions to discharge their responsibilities under the TFA 2010, as well as other financial sanctions regimes. Financial institutions devote considerable time and resources to ensuring that individual licences issued to designated persons are properly implemented. The Treasury will engage in further dialogue with the financial sector to explore any ways in which the operation of the licensing regime could be simplified.

1.12 The Treasury understands that the way in which frozen bank accounts are operated may cause some difficulties for designated persons. However, designated persons' access to funds needs to be carefully monitored and controlled to ensure that there is no breach of the asset-freeze and consequent risk to public safety. It is important to recognise that the ways in which banks operate frozen accounts and the action they may take once a designation is lifted, are commercial decisions for the financial institution concerned. These decisions are informed by compliance and risk policies and are not ones that the Treasury or regulator should determine.

1.13 Free advice for those unable to obtain bank accounts is available from the Money Advice Service, which offers impartial information and advice on financial matters.

Recommendation 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.

1.14 The Treasury produces a range of explanatory and advisory material on financial sanctions, including FAQs, which can be accessed via the Treasury website. Although these do not specifically address the impact of an asset-freeze, each designated person resident in the UK is sent a letter explaining the nature and effect of an asset freeze together with information on the licensing regime. Designated persons may approach the Treasury directly, or through their legal representatives, if further information about designation and licensing exemptions is required.

1.15 The Treasury recognises the demand for more information and will consult with solicitors as suggested. It will endeavour to provide further guidance for designated persons during the course of 2012.

Policy Statement on Designation

Policy Statement on Designation - Factors taken into account in making a final designation under the Terrorist Asset-Freezing etc. Act 2010

Under the Terrorist Asset-Freezing etc. Act 2010, the Treasury may make a “final” asset freeze designation in respect of a person only if the statutory requirements set out in section 2 of the Act are met. A final designation lasts for a year unless revoked earlier or renewed before the end of the year.

Under section 4(2), the Treasury may renew a final designation at any time before it expires if the requirements in section 2 continue to be met.

Reasonable belief of terrorist activity requirement

The first requirement is that the Treasury reasonably believe at least one of the conditions set out in section 2(1)(a) of the Act is met, i.e. that—

- i. the person is or has been involved in terrorist activity, or
- ii. the person is owned or controlled directly or indirectly by a person within sub-paragraph (i), or
- iii. the person is acting on behalf of or at the direction of a person within sub-paragraph (i).

For the purpose of section 2(1)(a), involvement in terrorist activity is any one or more of the following:

- i. the commission, preparation or instigation of acts of terrorism;
- ii. conduct that facilitates the commission, preparation or instigation of such acts, or that is intended to do so; or
- iii. conduct that gives support or assistance to persons who are known or believed by the person concerned to be involved in conduct falling within (i) or (ii) above.

“Terrorism” is defined in section 1 of the Terrorism Act 2000.

In deciding whether the reasonable belief test is met, the Treasury considers the reliability of the information which indicates that a person may have engaged in terrorist activity.

Where a person has been convicted of a terrorist offence in the United Kingdom, the evidence of their involvement in terrorist activity will have met the criminal standard of proof “beyond reasonable doubt” and will, therefore, also meet the reasonable belief requirement in section 2(1)(a) of the Act.

Public protection requirement

Section 2(1)(b) of the 2010 Act requires that the Treasury also consider whether it is necessary for purposes connected with protecting members of the public from terrorism that financial restrictions should be applied in relation to the person. The public protection requirement is not limited to protecting members of the public in the United Kingdom.

There is a wide range of factors that the Treasury takes into account in deciding whether the necessity test is met depending on the case. These include:

- The nature and extent of the person's terrorist activity;
- In the case of overseas groups or individuals, the terrorist threat posed to UK citizens and others overseas;
- Whether the person continues to be involved, or might re-engage, in terrorist activity;
- The impact of an asset freeze in limiting a person's access to their own or others' funds in the UK, including funds passed to them by third parties, and in denying them access to the UK financial system;
- The need for an asset freeze in light of other restrictions placed on the person;
- The UK's broader counter-terrorism agenda, including the Government's counter-terrorism programme "PREVENT"; and
- The need to maintain counter-terrorism relationships with other countries.

Exercise of discretion

If both parts of the statutory test are met, the Treasury also considers whether an asset freeze is proportionate in each case, taking account of the impact on the person's business or private life, other restrictions that may be in place upon the person and whether any other counter-terrorism measure offers the same protection to the public as an asset freeze, balanced against the legislative objective of protecting members of the public from terrorism.

Before making a designation decision, the Treasury will seek out and consider advice from relevant departments and agencies.

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