

TERRORIST ASSET-FREEZING (TEMPORARY PROVISIONS) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1 – Temporary validity of certain Orders in Council

12. *Subsection (1)* specifies that the provisions of section 1 of the Act have effect for the period beginning when the Act came into force and ending at midnight on 31st December 2010.
13. *Subsection (2)* provides that, during that period, the UN Terrorism Orders are deemed to have been validly made under the UN Act and that every provision of those Orders is deemed to be within the power conferred by section 1 of the UN Act. This ensures the continued validity of the UN Terrorism Orders notwithstanding the judgment of the Supreme Court and the quashing of the 2006 Order.
14. *Subsection (3)* makes clear that as a consequence of *subsection (2)*, all directions which have previously been made or licences previously granted under the UN Terrorism Orders have legal effect. Further directions can be made under the 2009 Order and the Overseas Terrorism Orders and licences granted under the authority of the UN Terrorism Orders during that period. Finally, this subsection ensures that, during that period, the prohibitions and obligations imposed by the UN Terrorism Orders have legal force and criminal liability may be incurred by a person who fails to comply.

Section 2 – Protection of things done or omitted in interim period

15. *Subsection (1)* specifies that the provisions of section 2 of the Act have effect in relation to things done or omitted in the period beginning with 4th February 2010 (that is, the day on which the 2006 Order was quashed) and ending with the coming into force of the Act. The provisions of section 2 therefore have retrospective effect.
16. *Subsection (2)* provides that anything done or omitted by a person other than the Treasury during that period is to be treated as valid, lawful or effectual as if the 2001 Order, the 2006 Order and the 2009 Order had been validly made under and their provisions were within the scope of the UN Act. This subsection is designed to protect for example financial institutions who continued to comply with the restrictions in the Orders applying to a designated person between the date of the quashing of the 2006 Order and the date the Act came into force, ensuring that their actions during that period were not rendered unlawful by virtue of the judgment of the Supreme Court.
17. *Subsection (3)* specifies that actions taken by persons during that period in reliance on or in consequence of something done or omitted by the Treasury are protected. So a person who acted in reliance on a direction given by the Treasury under the 2001 Order, the 2006 Order or the 2009 Order will be treated as having acted lawfully.

These notes refer to the Terrorist Asset-Freezing (Temporary Provisions) Act 2010 (c.2) which received Royal Assent on 10th February 2010

18. *Subsection (4)* ensures that section 2 does not affect the bringing of any legal challenges on a ground independent of the question whether those Orders were validly made under the UN Act.
19. Paragraph (a) of *subsection (5)* provides that section 2 does not affect any liability of the Treasury in respect of an act or omission which would be unlawful if this section were not enacted. Paragraph (b) of *subsection (5)* ensures that no criminal liability attaches to any acts or omissions by persons during the retrospective period. Criminal liability may arise in respect of acts or omissions which occur after Royal Assent in accordance with section 1.

Section 3 – Short title, commencement and extent

20. *Subsection (1)* sets out the short title of the Act, *subsection (2)* provides that the Act comes into force immediately it is passed and *subsection (3)* provides that the Act extends to England and Wales, Scotland and Northern Ireland. *Subsection (4)* provides that the provisions of section 1 and section 3 extend to the Channel Islands, the Isle of Man and the territories listed in Schedule 1 to the Terrorism (United Nations Measures) (Overseas Territories) Order 2001.