

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

TERRORIST ASSET-FREEZING (TEMPORARY PROVISIONS) ACT 2010

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Terrorist Asset-Freezing (Temporary Provisions) Act 2010 which received Royal Assent on 10th February 2010. They have been prepared by the Treasury in order to assist the reader of the Act and to help inform debate on it. They do not form part of the Act and have not been endorsed by Parliament.
2. The Notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

BACKGROUND

3. United Nations Security Council Resolution 1373 (“resolution 1373”) was adopted on 28th September 2001 and includes a requirement that Member States of the United Nations must (a) prevent the financing of terrorist acts, including the freezing of funds and economic resources of persons who commit or attempt to commit terrorist acts or participate in or facilitate such acts, and (b) prohibit their nationals and those within their territories from making funds, financial services or economic resources available to such persons.
4. United Nations Security Council Resolution 1452 (“resolution 1452”) introduces exemptions to prohibitions on making funds, financial assets or economic resources available to permit payments necessary to meet basic humanitarian needs, such as payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, public utility charges and legal fees and expenses) and necessary for extraordinary expenses.
5. Obligations under resolution 1373 and resolution 1452 have been implemented by the Treasury by a number of Orders in Council made under section 1 of the United Nations Act 1946 (the “UN Act”). Under section 1 of the UN Act, there is a power to make an Order in Council to give effect to any decision of the UN Security Council where such provision appears “necessary or expedient for enabling those measures to be effectively applied”.

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6. The Terrorism (United Nations Measures) Order 2001 (the “2001 Order”), the Terrorism (United Nations Measures) Order 2006 (the “2006 Order”) and the Terrorism (United Nations Measures) Order 2009 (the “2009 Order”) were made under section 1 of the UN Act for this purpose. The 2006 Order replaced and revoked the 2001 Order save that directions designating persons under article 4 of the 2001 Order, which remained in force on the date the 2006 Order came into force, continued to apply and the provisions of the 2001 Order continued to apply to such directions. Similarly, the 2009 Order replaced and revoked the 2006 Order save that directions under article 4 of the 2006 Order and 2001 Order which remained in force on the date the 2009 Order came into force continued to apply and the provisions of the previous Orders continued to apply to such directions.
7. Terrorist asset-freezing provisions were also introduced by way of Orders in Council under the UN Act in the Channel Islands (by the Terrorism (United Nations Measures) (Channel Islands) Order 2001), the Isle of Man (by the Terrorism (United Nations Measures) (Isle of Man) Order 2001) and the British Overseas Territories (by the Terrorism (United Nations Measures) (Overseas Territories) Order 2001). In these Notes, those Orders are referred to collectively as the “Overseas Terrorism Orders” and, together with the 2001 Order, the 2006 Order and the 2009 Order are referred to collectively as the “UN Terrorism Orders”.
8. On 27th January 2010 the Supreme Court handed down judgment in which it decided that the 2006 Order was *ultra vires* the UN Act. The Treasury sought a stay from the Court of the order to give effect to the judgment. The Supreme Court refused to suspend the operation of the judgment and on 4th February 2010 made an order that the 2006 Order was quashed. The Supreme Court did not rule upon the lawfulness of the 2001 Order, the 2009 Order or the Overseas Terrorism Orders but those Orders are liable to be quashed on the same grounds as the 2006 Order.
9. The purpose of the Act is to provide for the temporary validity of the UN Terrorism Orders in order to maintain asset-freezing restrictions whilst the Government takes steps to put in place by means of primary legislation an asset-freezing regime to comply with the obligations in resolution 1373. There are 20 persons in the United Kingdom subject to an asset freeze under the 2001 or 2009 Orders and approximately £135,000 is frozen. In addition, there were 13 persons subject to an asset freeze under the 2006 Order and approximately £16,000 was frozen as at 4th February 2010.

TERRITORIAL EXTENT AND APPLICATION

10. The Act extends to England and Wales, Scotland and Northern Ireland, and sections 1 and 3 of the Act extend to the Channel Islands, the Isle of Man, Anguila, Bermuda, British Antarctic Territory, British Indian Ocean Territory, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St Helena and Dependencies, South Georgia and the South Sandwich Islands, the Sovereign Base Areas of Akrotiri and Dhekelia, Turks and Caicos Islands and Virgin Islands.

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11. The Act deals only with reserved matters in respect of Scotland and excepted matters in respect of Northern Ireland. It does not confer any functions on the National Assembly for Wales, and applies to Wales in the same way as it applies to England.

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

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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.

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.

HANSARD REFERENCES

House of Commons		
Introduction	5 th February 2010	No debate
Second Reading	8 th February 2010	Vol. 505 Cols. 652 - 698
Committee	8 th February 2010	Vol. 505 Cols. 699 - 720
Third Reading	8 th February 2010	Vol. 505 Cols. 720 - 722

House of Lords		
Introduction	8 th February 2010	Vol. 717 Col. 600
Second Reading	9 th February 2010	Vol. 717 Cols. 612 - 634
Committee	9 th February 2010	Vol. 717 Cols. 660 - 689
Report	9 th February 2010	Vol. 717 Col. 724
Third Reading	9 th February 2010	Vol. 717 Col. 724

Royal Assent		
House of Commons	10 th February 2010	Vol. 505 Col. 969
House of Lords	10 th February 2010	Vol. 717 Col. 806

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