

EXPLANATORY MEMORANDUM TO
THE FINANCIAL RESTRICTIONS (IRAN) ORDER 2011

2011 No. 2775

1. This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order contains a direction imposing financial restrictions in relation to Iran. The direction is made in response to the risk posed to the national interests of the United Kingdom by activity in Iran that facilitates the development or production of nuclear weapons, and in response to advice from the Financial Action Task Force that counter measures should be taken in relation to Iran because of the risk of terrorist financing or money laundering activities being carried on in the country. The direction requires the United Kingdom financial sector to cease dealings with Iranian banks and their subsidiaries.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 This Order is made under powers conferred on the Treasury by Schedule 7 to the Counter-Terrorism Act 2008. The Treasury consider that the first and third of the three possible preconditions under paragraph 1 of Schedule 7 for the use of the power to make a direction are satisfied. The Financial Action Task Force has, most recently in its statement of 28 October 2011, called on its members and urged all jurisdictions to apply effective counter-measures to protect their financial sectors from money laundering and financing of terrorism risks emanating from Iran. The Treasury also believe that activity in Iran that facilitates the development or production of nuclear weapons poses a significant risk to the national interests of the United Kingdom.

4.2 As the direction is given to all persons operating in the financial sector it must, in accordance with paragraph 14(1) of Schedule 7, be contained in an order, and as the direction is concerned with limiting or ceasing business, and so is of a kind mentioned in paragraph 13 of Schedule 7, the Parliamentary procedure set out in paragraph 14(2) applies.

4.3 In accordance with paragraph 16(4) of Schedule 7, if the Order is not previously revoked, it will cease to have effect at the end of one year from the date of making.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Commercial Secretary to the Treasury has made the following statement regarding Human Rights:

In my view the provisions of the Financial Restrictions (Iran) Order 2011 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 The Order contains a direction to UK credit and financial institutions to cease all transactions and business relationships with Iranian banks and their subsidiaries, and the Central Bank of Iran. These restrictions are being imposed because of the role of Iranian banks in activity in Iran that facilitates the development or production of nuclear weapons. It is considered that a direction to cease business with Iranian banks and their subsidiaries will contribute to addressing the risk to UK national interests posed by Iran's proliferation sensitive activities and is a suitable measure to address the risk of terrorist financing and money laundering activities. The Treasury have considered whether any of the other kinds of direction permitted by Schedule 7 to the Counter-Terrorism Act 2008 would be sufficient and concluded that a direction to cease business is necessary. We have discussed these risks and our response with our international partners.

- Consolidation

7.2 There are currently no plans to consolidate the relevant legislation.

8. Consultation outcome

8.1 Given the nature of the Order, no formal consultation procedure was carried out. However, the British Bankers' Association and some of its members, the Financial Services Authority and UK Trade and Investment were consulted on an informal basis.

9. Guidance

9.1 A guidance note giving further explanation of the requirements and effects of the direction has been prepared by the Treasury and is available on the Treasury website. In addition, the Financial Services Authority and HMRC have issued general guidance on compliance with a direction given under Schedule 7.

10. Impact

10.1 Due to the confidential nature of the Order, a full consultation has not been possible, however we anticipate that the direct impact on businesses, charities or voluntary bodies is likely to be small. Only UK financial and credit institutions are covered by the requirements of the Order. If these institutions do not have any business with Iranian banks, they will merely have to factor the restriction into their current compliance procedures. Those institutions undertaking business with Iranian banks will be more affected but provision is made under Schedule 7 to the Counter-Terrorism Act 2008 for the Treasury to license exemptions from the restrictions. Legitimate existing contracts may be exempted, and costs thereby minimised. Third parties with affected business may also apply for a licence.

10.2 UK exports to Iran in 2010 totalled £286 million and UK imports from Iran in 2010 totalled £189 million. While it is the Government's policy not to encourage trade with Iran, the Order does not prohibit trade with Iran.

10.3 The impact on the public sector is similarly difficult to estimate. However, the supervisory and enforcement authorities in relation to a direction are the same as those under existing money laundering and terrorist financing legislation, and this provides for an efficient integrated approach within existing resources. Consequently, significant additional costs of securing compliance with the direction are not anticipated. There will be some cost in raising awareness of the direction and in dealing with questions and queries, but this is expected to be minimal and will be met from existing resources.

10.4 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

11. Regulating small business

11.1 The legislation applies to small businesses that are financial and credit institutions, with a number of exclusions for certain firms that have only limited, occasional or incidental financial activities. This approach replicates existing procedures for business regulated for existing money laundering and terrorist financing purposes.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the Treasury work with the financial sector on the requirements for complying with the Order. The Treasury have provided detailed guidance to assist business in complying with these measures.

12. Monitoring & review

12.1 The direction has a time limit of one year. The Treasury will keep the direction under review and are required by paragraph 38 of Schedule 7 to the Counter-Terrorism Act 2008 to report every year to Parliament on the exercise of their functions under the Schedule.

13. Contact

The Sanctions and Illicit Finance team at the Treasury Tel: 020 7270 5454 or email: afu@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.