

**EXPLANATORY MEMORANDUM TO**  
**THE TERRORIST ASSET-FREEZING ETC. ACT 2010 (OVERSEAS**  
**TERRITORIES) ORDER 2011**

**2011 No. 750**

1. This explanatory memorandum has been prepared by the Foreign and Commonwealth Office.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 The Terrorist Asset Freezing etc. Act 2010 (Overseas Territories) Order 2011 (SI 2011/750) (the “Order”) extends Part 1 of the Terrorist Asset-Freezing Act 2010 (“the 2010 Act”) to the Overseas Territories listed in Schedule 1 to the Order. Part 1 of the 2010 Act gives effect to UN Security Council Resolution 1373(2001) (“UNSCR 1373”). Part 1 provides for freezing the assets of specified persons and prohibiting funds, financial services or economic resources being made available to them.

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

3.1 None

4. **Legislative Context**

4.1 On 28<sup>th</sup> September 2001, the United Nations Security Council adopted resolution 1373(2001) which requires Member States to freeze the assets of those involved in terrorist acts, and to prohibit funds, economic resources and financial services being made available to those involved in terrorist acts.

4.2 Obligations under resolution 1373 had 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”). These Orders included the Terrorism (United Nations Measures) Order 2006 (S.I. 2006/2657) (“the 2006 Order”), and its successor the Terrorism (United Nations Measures) Order 2009 (S.I. 2009/1747) (“the 2009 Order”), and the Terrorism (United Nations Measures) (Overseas Territories) Order 2001 (S.I. 2001/3366) (“the Overseas Territories Order”). On 27 January 2010 the Supreme Court decided in the case *Ahmed & Ors v HM Treasury*<sup>1</sup> that the 2006 Order was ultra vires the UN Act and on 4 February 2010 made an order quashing it. The Supreme Court did not rule upon the lawfulness of the 2009 Order or the Overseas Territories Order but both orders were liable to be quashed on the same grounds as the 2006 Order.

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<sup>1</sup> [2010] UKSC 2

4.4 The Terrorist Asset-Freezing (Temporary Provisions) Act 2010 (“the Temporary Provisions Act”) provided that a number of orders, including the 2006 and 2009 Orders and the Overseas Territories Order were deemed to have been validly made under the UN Act and for directions made imposing assets freezes and other prohibitions to have effect for the period from Royal Assent (10 February 2010) until 31 December 2010. This therefore maintained terrorist asset-freezing restrictions which had been quashed by the Supreme Court ruling or which were vulnerable to being quashed as a consequence of that ruling.

4.5 On 17 December 2010 the 2010 Act came into force. Part 1 of that Act provides a power for the Treasury to freeze the assets of persons the Treasury reasonably suspects to be involved in terrorist activity (the freeze is for up to 30 days only) or persons the Treasury reasonably believes are involved in terrorism (freeze is for one year, with a power to renew). In both cases, such measures can only be imposed where restrictions are considered necessary for reasons connected to public safety. The 2010 Act repealed the Temporary Provisions Act but section 54(2) of the Act provides that the sections of that Act which apply as part of the law of Guernsey, Jersey, the Isle of Man and the territories listed in Schedule 1 to the Overseas Territories Order continue to have effect until 31 March 2011. While this provision has effect the financial restrictions imposed under the Overseas Territories Order cannot be quashed on the basis that they are ultra vires the UN Act.

4.6 The 2010 Act includes provision to extend, with or without modifications, Part 1 of the 2010 Act to any of the Channel Islands, the Isle of Man or any British overseas territory. This Order extends Part 1 of the 2010 Act to the overseas territories listed in Schedule 1 to the Order. A separate order is being prepared to extend Part 1 of the 2010 Act to the Channel Islands and the Isle of Man as necessary. The 2010 Act is modified to vest the power to freeze assets in the hands of the Governor of each territory. Other modifications to Part 1 of the 2010 Act include omitting requirements for quarterly reports and an independent review of the operation of Part 1 in the territory, and omissions in relation to the content of court rules which apply to challenges to asset freezing decisions.

## **5. Territorial Extent and Application**

5.1 This instrument applies to the Overseas Territories specified in Schedule 1.

## **6. European Convention on Human Rights**

As the instrument is only required to be laid and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 United Nations Security Council resolution 1373(2001) requires Member States to:

Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities,

including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities; and to

Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons

Part 1 of the 2010 Act replaces the 2009 Order in implementing the requirements of UNSCR 1373 in the UK. Part 1 of the Act also gives the Treasury the power to licence exemptions from activities otherwise prohibited. Part 1 also gives the Treasury powers to require information from designated persons and others for the purpose of monitoring compliance with and detecting evasion of Part 1, and to share such information with particular persons or for particular purposes.

7.2 The Order applies Part 1 to the Overseas Territories listed in Schedule 1 to the Order. It replaces the existing power that these Overseas Territories have to freeze the assets of those suspected of being involved in terrorism under the Overseas Territories Order which, as set out above, is vulnerable to being quashed. Applying Part 1 of the 2010 Act to these Overseas Territories will give them a similar power to to the Treasury's powers under the 2010 Act, allowing them to make asset freezes, licence exemptions, and to require and share information within their own territories.

7.3 The United Kingdom has an obligation to provide penalties for offences enforcing Regulation (EC) No. 2580/2001 (OJ No.L344,28.12.2001 p.70) ("the EC Regulation"). This is provided for in section 1(b) Part 1 of the 2010 Act. The Overseas Territories have no such obligation to provide penalties so section 1(b) is not one of the provisions in Part 1 extended to the Overseas Territories.

- ***Consolidation***

7.4 It is not expected that there will be any consolidation of this instrument.

## **8. Consultation outcome**

8.1 The governments of the Overseas Territories listed in Schedule 1 have been consulted on the principle of the extension of Part 1 of the 2010 Act, and on the terms of this instrument, and are content.

## **9. Guidance**

9.1 The instrument is not complex and the department is not intending to issue guidance.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is expected to be minimal.

10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment has not been prepared for this instrument.

**11. Regulating small business**

11.1 The legislation applies to small business.

11.2 The basis for the final decision on what action to take in respect of small business was not subject to consultation.

**12. Monitoring & review**

12.1 This will be undertaken as necessary by the relevant authorities in the Overseas Territories.

**13. Contact**

Jonathan Drakeford in Foreign and Commonwealth Office Legal Advisers can answer any queries regarding the instrument.

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