

EXPLANATORY MEMORANDUM TO

THE ANDREY LUGOVOY AND DMITRI KOVTUN FREEZING ORDER 2016

2016 No. 67

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The purpose of the instrument is to make a freezing order (the “Order”) that prohibits persons from making funds available to or for the benefit of Andrey Lugovoy and Dmitri Kovtun, in accordance with relevant provisions contained in the Anti-terrorism, Crime and Security Act 2001 (“the Act”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments. This instrument has been laid before Parliament less than 21 days before it comes into force.

- 3.1 The instrument must come into force as soon as possible after the Order is made, otherwise there is a significantly increased risk of asset flight on the part of persons specified in the Order. It is not known whether or not either person against whom this order is made has assets that will be caught by this Order. But if they have the two persons will act quickly to remove those assets from the reach of this Order.
- 3.2 The Treasury provides a dedicated email address and telephone number to deal with queries from the financial sector and other affected persons. A notice explaining the Order is available on the Treasury website and was emailed to subscribers.

Other matters of interest to the House of Commons

- 3.3 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and includes Northern Ireland.

4. Legislative Context

- 4.1 The Act contains a power for the Treasury to make an Order, if certain conditions are satisfied (section 4). An Order prohibits persons from making funds available to or for the benefit of those persons specified in the freezing order.
- 4.2 In this instance, the Order is made on the basis of reasonable belief that action constituting a threat to life of Alexander Litvinenko, being a national and resident of the United Kingdom has been taken by persons specified in Article 3 of the Order (cf. s.4(2)(b) of the Act). These persons are judged to be residents of a country or territory outside of the United Kingdom (cf. s.4(3)). The Treasury believe that this Order will be an effective deterrent to prevent similar activities being undertaken again.

- 4.3 The Treasury consulted the Secretary of State, in accordance with section 10(5) of the Act.
- 4.4 The Treasury must keep the Order under review, in accordance with s.7 of the Act.

5. Extent and Territorial Application

- 5.1 This instrument extends to all of the United Kingdom.
- 5.2 This instrument applies to all of the United Kingdom, and outside the United Kingdom, to any UK national, any body incorporated under the law of any part of the United Kingdom, a person under the British Nationality Act 1981 that is a British subject, or a British protected person under that Act.

6. European Convention on Human Rights

- 6.1 The Economic Secretary to the Treasury, Harriett Baldwin MP has made the following statement regarding Human Rights:
- 6.2 In my view the provisions of The Andrey Lugovoy and Dmitri Kovtun Freezing Order 2016 are compatible with the Convention rights.

7. Policy background

What is being done and why

- 7.1 The Treasury are using powers available under Part 2 of the Act to make an Order prohibiting persons in the United Kingdom and all persons elsewhere who are nationals of the United Kingdom, or are bodies incorporated under the law of any part of the United Kingdom or are Scottish partnerships, from making funds available to or for the benefit of Andrey Lugovoy and Dmitri Kovtun. The power in the Act gives the Treasury the power to take action to freeze assets of overseas persons or governments where there is a threat to the life or property of United Kingdom nationals or residents.
- 7.2 This follows the publication of the Report into the death of Alexander Litvinenko by the Litvinenko Inquiry chaired by Sir Robert Owen. The report, published on 21st January 2016, found that Mr Litvinenko was deliberately poisoned by Andrey Lugovoy and Dmitri Kovtun in November 2006.
- 7.3 Making this order makes it clear that the United Kingdom will not tolerate activities of this sort, and constitutes a deterrent to these persons and others from undertaking similar activities in the future.

Consolidation

- 7.4 Not applicable.

8. Consultation outcome

- 8.1 HM Treasury have consulted the Secretary of State in accordance with s.10(5) of the Act. There has been no public consultation. The importance to the safety of UK nationals and residents of this Order means that a public consultation is not appropriate, and the speed at which the Order needs to be made to avoid asset flight means that there has not been time to conduct a public consultation.

9. Guidance

- 9.1 Guidance on current asset freezing regimes is available on the Treasury's website. The Treasury's Sanctions & Illicit Finance Team operates a free subscription email service alerting subscribers on changes to the asset freezing regimes, and on other financial sanctions measures. A dedicated telephone line and email address are available for the financial sector and any other persons to submit queries on the asset freezing regime. A notice explaining the Order is available on the Treasury website and was emailed to subscribers.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is contingent on their respective exposure to the persons specified in the freezing order. Businesses are already required to have systems in place to implement asset freezes and other financial sanctions. The addition of these two names is likely to have negligible impact. To minimise the impact of complying with such restrictions, the Treasury works closely with these organisations, including (but not limited to) the action referred to in the Guidance section above.
- 10.2 The impact on the public sector is negligible.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the Treasury work with the financial sector on the requirements for complying with the asset freezing and financial sanctions measures set out in the freezing order.

12. Monitoring & review

- 12.1 The Treasury is obliged to keep the freezing order (and therefore the instrument) under review in accordance with s.7 of the Act. It is therefore not necessary, not appropriate in the circumstances, to make provision for further periodic review as contemplated in ss.28-32 of the Small Business Enterprise and Employment Act 2015.

13. Contact

- 13.1 Financial Sanctions at the Treasury Tel: 020 7270 5454 or email: financialsanctions@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.