

COUNTER-TERRORISM ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 – Terrorist Financing and Money Laundering

Terrorist financing and money laundering

Section 62 – Terrorist financing and money laundering

178. *Section 62* introduces Schedule 7 to the Act. Schedule 7 sets out new powers for the Treasury to direct financial and credit institutions to take certain action in respect of business with persons in a non-EEA country of money laundering, terrorist financing or proliferation concern. The Schedule also makes provision for a supervisory regime, and for the imposition of civil and criminal penalties.

Schedule 7 – Terrorist financing and money laundering

179. *Part 1* of the Schedule sets out the conditions for giving a direction. *Paragraph 1* provides that the Treasury may act in circumstances where: (a) the Financial Action Task Force has called for measures to be taken against a country because of the risk it presents of money laundering or terrorist financing; (b) the Treasury reasonably believe a country poses a significant risk to the UK's national interests because of the risk of money laundering or terrorist financing there; or (c) the Treasury reasonably believe a country poses a significant risk to the UK's national interests because of the development or production of nuclear, radiological, biological or chemical weapons there, or the facilitation of such development. *Paragraph 2* defines terms used in *paragraph 1*.
180. *Part 2* sets out the persons to whom a direction may be given. *Paragraph 3* provides that a direction may be addressed to a particular person operating in the financial sector, any description of persons operating in that sector, or all persons operating in that sector. *Paragraphs 4 to 7* define who is a person operating in the financial sector. *Paragraph 8* provides that the Treasury may by affirmative order amend the definition.
181. *Part 3* sets out the requirements that may be imposed by a direction. *Paragraph 9* provides that the Treasury may issue a direction imposing requirements in relation to transactions or business relationships with a person carrying on business in the country, the government of the country, or a person resident or incorporated in the country. A direction may require enhanced customer due diligence measures to be undertaken before entering into or during a business relationship or transaction; enhanced ongoing monitoring of a business relationship; the provision of specified information and documents relating to transactions and business relationships; and that new business relationships or transactions should not be entered into or existing relationships or transactions should cease (*paragraphs 10 to 13*).
182. *Part 4* sets out the procedural requirements for directions. *Paragraph 14* provides that directions addressed to a description of persons in the financial sector or to all persons in the sector must be contained in an order. Where such a direction requires the

limitation or cessation of business it is subject to the affirmative procedure; otherwise it is subject to the negative resolution procedure. A direction to a particular person need not be contained in an order. *Paragraphs 15 and 16* require directions addressed to a particular person to be brought to the attention of that person, and general directions to be publicised. *Paragraph 17* makes provision for the issue of licences to exempt acts which would otherwise be subject to the requirements of a direction to cease or limit business.

183. *Part 5* makes provision for enforcement authorities to obtain information in connection with the exercise of their functions under the Schedule. *Paragraph 18* defines enforcement authority and enforcement officer. *Paragraph 19* provides for enforcement officers to require by notice the provision of information or documents. *Paragraph 20* provides for a power of entry and inspection without a warrant and *paragraph 21* provides for entry to premises under a warrant. *Paragraph 22* makes provision for information which would be protected by legal professional privilege.
184. *Part 6* provides for the imposition of civil penalties by enforcement authorities. *Paragraph 25* provides that an enforcement authority may impose a penalty on a person who fails to comply with a requirement imposed by a direction or by a condition of a licence. *Paragraph 26* imposes procedural requirements where the Commissioners for HM Revenue and Customs impose penalties, and provides a right to request a review. *Paragraph 27* imposes procedural requirements for penalties imposed by the other enforcement authorities (the Financial Services Authority, Office of Fair Trading and the Department of Enterprise Trade and Investment in Northern Ireland). *Paragraph 28* provides for appeal to a tribunal against the imposition of a penalty. *Paragraph 29* makes provision for the payment and recovery of penalties.
185. *Part 7* makes provision for offences. *Paragraphs 30 and 31* provide that it is an offence to fail to comply with a requirement imposed by a direction, or to provide false information in order to obtain a licence. *Paragraph 32* provides that conduct outside the UK by a UK national or body may constitute an offence. *Paragraph 33* contains provisions regarding the prosecution of offences. *Paragraph 34* provides for courts to have jurisdiction over offences committed outside the UK. *Paragraph 35* concerns the time limit for bringing summary proceedings. *Paragraph 36* provides that officers of bodies corporate are guilty of an offence as well as the body itself, if they have consented or connived in its commission or if the offence is attributable to the officer's neglect. *Paragraph 37* makes provision for proceedings against unincorporated bodies.
186. *Part 8* provides, in *paragraph 38*, for the Treasury to report annually to Parliament on their exercise of powers under the Schedule. *Paragraph 39* imposes a duty on the supervisory authorities (each of the enforcement authorities is responsible for supervising particular types of bodies) to secure compliance by those it supervises with the requirements of directions. *Paragraph 40* makes provision for the Treasury to assist a supervisory authority or other body in drawing up guidance. *Paragraph 41* makes provision regarding the functions of the Financial Services Authority, and civil penalties imposed by the Authority. *Paragraph 42* makes provision as to the giving of notices under the Schedule. *Paragraph 44* defines United Kingdom person and *paragraph 45* contains other interpretative provisions.