

TERRORIST ASSET-FREEZING ETC. ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Part 1 – Terrorist Asset-Freezing

Chapter 2 – Prohibitions in Relation to Designated Persons

Prohibitions

Section 11 – Freezing of funds and economic resources

32. **Sections 11 to 15** set out the main consequences of a person being subject to an interim designation or a final designation. Section 11 makes it an offence for a person to deal with funds or economic resources owned, held or controlled by a designated person if the person who is dealing knows, or has reasonable cause to suspect, that the funds or economic resources in question are owned, held or controlled by a designated person (*subsections (1) and (4)*). The terms “funds” and “economic resources” are defined in section 39.
33. *Subsection (2)* provides the meaning of “deal with” for the purpose of section 11.
34. *Subsection (3)* states that the offence in *subsection (1)* is subject to the provisions of section 16 (which set out exceptions to this and the offences in sections 12 and 13) and section 17 (which permits activities which would otherwise fall within the offences in section 11 to 15 to be permitted by licence from the Treasury).

Section 12 – Making funds or financial services available to designated person

35. **Section 12** makes it an offence for a person to make funds or financial services available (directly or indirectly) to a designated person if the person making the funds or financial services available knows, or has reasonable cause to suspect, that the funds or financial services are being made available (directly or indirectly) to a designated person. The term “financial services” is defined in section 40.

Section 13 – Making funds or financial services available for benefit of designated person

36. This section makes it an offence for a person to make funds or financial services available to any person for the benefit of a designated person if the person making the funds or financial services available knows, or has reasonable cause to suspect, that the funds or financial services are being made available for the benefit of a designated person. In contrast to the prohibition in section 12, which prohibits the making available of funds or financial services, directly or indirectly, to the designated person, the section 13 prohibition relates to the making available of funds or financial services to third parties but which are for the benefit of the designated person.
37. *Subsection (2)* provides that for the purposes of section 13, funds or financial services are made available for the benefit of a designated person only if that person thereby

obtains, or is able to obtain, a significant financial benefit, where “financial benefit” includes the discharge of a financial obligation for which the designated person is wholly or partly responsible. No particular threshold level or amount of financial benefit is specified as constituting a “significant” financial benefit. Whether a financial benefit is “significant” is dependent on the circumstances of each particular case. Various factors may lead to a conclusion that a financial benefit is or is not significant, including the value of the financial benefit, the frequency with which the financial benefit is conferred on the designated person and the nature of the financial benefit.

Section 14 – Making economic resources available to designated person

38. **Section 14** makes it an offence for a person to make economic resources available (directly or indirectly) to a designated person if the person making the economic resources available knows, or has reasonable cause to suspect, that (a) the economic resources are being made available (directly or indirectly) to a designated person and (b) the designated person would be likely to exchange the economic resources, or use them in exchange, for funds, goods or services.

Section 15 – Making economic resources available for benefit of designated person

39. This section makes it an offence for a person to make economic resources available to any person for the benefit of a designated person if the person making the economic resources available knows, or has reasonable cause to suspect, that the economic resources are being made available for the benefit of a designated person. While the prohibition in section 14 prohibits the making available of economic resources to the designated person, the section 15 prohibition relates to the making available of economic resources to third parties but which are for the benefit of, or give rise to a benefit to, the designated person.
40. As is the case under section 13(2), the prohibition in section 15 is only engaged if the designated person obtains, or is able to obtain, a significant financial benefit as a consequence of the making available of economic resources to the third party.

Exceptions and licences

Section 16 – Exceptions

41. **Section 16** sets out various activities which do not contravene the prohibitions in sections 11 to 13 of the Act. *Subsection (1)* provides that relevant institutions (defined in section 41) which credit frozen accounts with interest or other earnings due on the account, or payments due under contracts, agreements or obligations that were concluded or arose before the account became frozen, are not in breach of the prohibitions in sections 11 to 13. *Subsection (2)* exempts from the prohibitions in sections 12 and 13 relevant institutions which credit frozen accounts where they receive funds transferred to a frozen account. Any funds credited to a frozen account in accordance with *subsection (1)* or *(2)* become frozen once they have been so credited.
42. *Subsection (3)* makes it clear that the payment of state benefits to a person other than a designated person is not caught by the prohibition in section 13. This provision is intended in part to reflect the European Court of Justice decision in C-340/08. In this case the ECJ decided that the prohibition on making funds available for the benefit of a designated person in an EC Regulation concerning Al-Qaida and the Taliban (there is similar provision in the EC Regulation on terrorism) did not apply to the payment of certain state benefits payable to members of the household of a designated person. *Subsection (3)* covers both the payment of benefits payable to persons other than the designated person, and in addition the payment of benefits due to a designated person but which are paid to a non-designated person (e.g. if the designated person requests that the benefit is paid to a family member and the paying body agrees to the request). Whilst *subsection (3)* allows benefits departments to make funds available to a non-

designated person for the benefit of a designated person, it remains an offence under section 12 for those funds then to be made available to the designated person. It also remains an offence under section 13 for those funds then to be made available for the designated person's benefit where the designated person thereby obtains, or is able to obtain, a significant financial benefit.

43. *Subsection (4)* requires a relevant institution to inform the Treasury without delay if it credits a frozen account in accordance with *subsections (1)(b) or (2)*. *Subsection (5)* defines "frozen account".

Section 17 – licences

44. *Section 17* provides that persons may take any actions which would otherwise breach the prohibitions in sections 11 to 15 of the Act if they do so under authority of a licence granted by the Treasury (*subsection (1)*). The Treasury have the power to vary or revoke a licence at any time (*subsection (4)*). *Subsection (2)* provides that, where relevant, such a licence also constitutes authorisation under Article 6 of the EC Regulation. Article 6 provides a similar power to Competent Authorities to authorise actions which would otherwise breach the prohibitions under the EC Regulation.
45. *Subsection (3)* deals with the contents, scope and duration of licences issued by the Treasury. A licence must specify the acts authorised by it and may be (a) general or granted to a category of persons or to a particular person, (b) subject to conditions and (c) of indefinite duration or subject to an expiry date.
46. *Subsection (5)* sets out the notification requirements on the Treasury in the event that they grant, vary or revoke a licence, which are that they give written notice of the grant, variation or revocation to the person to whom the licence is granted or, if it is a general licence or granted to a category of persons, they take such steps as they consider appropriate to publicise the grant, variation or revocation.
47. *Subsection (6)* makes it an offence for a person knowingly or recklessly to provide information that is false in a material respect, or provide or produce a document that is not what it purports to be, for the purpose of obtaining a licence. Under *subsection (7)* it is an offence for a person who purports to act under the authority of a licence to fail to comply with any conditions imposed on that person by the licence.

Circumventing prohibitions etc.

Section 18 – Circumventing prohibitions etc.

48. Under this section it is an offence for a person intentionally to participate in activities knowing that their object or effect is (whether directly or indirectly) to circumvent, or enable or facilitate the contravention of, the prohibitions in sections 11 to 15 of the Act.