

2016 No. 67

CRIMINAL LAW

The Andrey Lugovoy and Dmitri Kovtun Freezing Order 2016

Approved by both Houses of Parliament

Made - - - at 9.30 a.m. on 22nd January 2016

Laid before Parliament at 10.30 a.m. on 22nd January 2016

Coming into force - - at 12 noon on 22nd January 2016

The Treasury believe that action constituting a threat to the life of one or more nationals and residents of the United Kingdom has been taken by certain persons who are residents of a country or territory outside the United Kingdom.

The Treasury, in exercise of the powers conferred by sections 4 and 14 of and Schedule 3 to the Anti-terrorism, Crime and Security Act 2001^(a) and having consulted the Secretary of State^(b), make the following Order:

Citation, commencement, extent and application

1.—(1) This Order may be cited as the Andrey Lugovoy and Dmitri Kovtun Freezing Order 2016 and shall come into force at 12 noon on 22nd January 2016.

(2) Subject to paragraph (3) this Order extends to the United Kingdom.

(3) The prohibitions imposed by article 4 apply to the following persons—

(a) a person in the United Kingdom;

(b) any person elsewhere who is—

(i) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;

(ii) a person who under the British Nationality Act 1981^(c) is a British subject;

(iii) a British protected person within the meaning of that Act;

(iv) a body incorporated under the law of any part of the United Kingdom.

Interpretation

2.—(1) In this Order—

“the 2000 Act” means the Financial Services and Markets Act 2000^(d);

^(a) 2001 c.24.

^(b) In accordance with section s.10(5) of the 2001 Act.

^(c) 1981 c.61.

^(d) 2000 c.8.

“body corporate” includes a Scottish partnership and “a body incorporated under the law of any part of the United Kingdom” is to be interpreted accordingly;

“frozen funds” has the meaning given in article 4(1);

“funds” means financial assets and economic benefits of any kind, including (but not limited to) —

- (a) gold, cash, cheques, claims on money, drafts, money orders and other payment instruments;
- (b) deposits with relevant institutions or other persons, balances on accounts, debts and debt obligations;
- (c) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivative products;
- (d) interest, dividends or other income on or value accruing from or generated by assets;
- (e) credit, rights of set-off, guarantees, performance bonds or other financial commitments;
- (f) letters of credit, bills of lading, bills of sale; and
- (g) documents providing evidence of an interest in funds or financial resources;

“relevant institution” means —

- (a) a person who has permission under Part 4A of the 2000 Act (permission to carry on regulated activities); and
- (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to the 2000 Act (EEA passport rights)(a) which has permission under paragraph 15 of that Schedule(b) (as a result of qualifying for authorisation under paragraph 12 of that Schedule)(c) to accept deposits.

(2) The definition of “relevant institution” in paragraph (1) must be read with—

- (a) section 22(d) of the 2000 Act (regulated activities),
- (b) any relevant order under that section(e), and
- (c) Schedule 2(f) to that Act (regulated activities).

Specified persons

3.—(1) The following are specified persons for the purposes of this Order (being persons believed by the Treasury to have taken action constituting a threat to the life of one or more nationals and residents of the United Kingdom)—

- (a) Andrey Lugovoy; and
- (b) Dmitri Kovtun.

(2) If a specified person makes a written request, the Treasury must as soon as is practicable give him written reasons why he has been specified.

Freezing prohibitions

4.—(1) The provisions of this article apply in relation to the following funds (“frozen funds”)—

- (a) funds owned, held or controlled by Andrey Lugovoy; and

(a) As amended by S.I. 2006/3221, and S.I. 2013/3115.

(b) As amended by S.I. 2003/2066, S.I. 2007/3253, S.I. 2012/1906, S.I. 2013/1881 and S.I. 2015/575.

(c) As amended by S.I. 2007/126, S.I. 2007/3253 and S.I. 2012/1906.

(d) Section 22 was amended by the Financial Services Act 2012 (c.21), section 7(1).

(e) S.I. 2001/544 as amended, most recently by S.I. 2015/910.

(f) Schedule 2 was amended by the Dormant Bank and Building Society Accounts Act 2008 (c.31), section 15, Schedule 2, paragraph 1, the Regulation of Financial Services (Land Transactions) Act 2005 (c.24), section 1, the Financial Services Act 2012, section 7(2) to (5) and section 8 and by S.I. 2013/1881.

- (b) funds owned, held or controlled by Dmitri Kovtun.
- (2) A person must not make frozen funds available to or for the benefit of a specified person.
- (3) A person must not make frozen funds available at the direction or instruction of a specified person.
- (4) A person must not deal with frozen funds.
- (5) For the purposes of this article, making funds available to or for the benefit of a specified person includes—
 - (a) allowing him to withdraw from an account;
 - (b) honouring a cheque payable to him;
 - (c) crediting his account with interest;
 - (d) releasing documents of title (such as share certificates) held on his behalf;
 - (e) making available the proceeds of realisation of his property; and
 - (f) making a payment to or for his benefit.
- (6) In this article “deal with” means—
 - (a) use, alter, move, allow access to or transfer;
 - (b) deal with in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination; or
 - (c) make any other change that would enable use, including portfolio management.

Freezing prohibitions: offences

5.—(1) A person referred to in article 1(3) who fails to comply with a prohibition imposed by article 4 commits an offence.

(2) A person who engages in an activity knowing or intending that it will enable or facilitate the commission by another person of an offence under paragraph (1) commits an offence.

(3) It is a defence to the offences in this article for a person to prove that he or she did not know and had no reason to suppose that—

- (a) in relation to the prohibition in article 4(2) the person to whom or for whose benefit frozen funds were made available, or were to be made available;
- (b) in relation to the prohibition in article 4(3), the person at the direction or instruction of whom frozen funds were made available, or were to be made available;
- (c) in relation to the prohibition in article 4(4), the person who owned, held or controlled the frozen funds,

was a specified person.

Licensing

6.—(1) The Treasury may, by licence, authorise frozen funds to be made available.

(2) A licence may authorise a person to deal with frozen funds.

(3) The prohibitions in article 4 do not apply in respect of frozen funds made available or dealt with in accordance with a licence granted under this article.

(4) A licence may be—

- (a) of indefinite duration or subject to an expiry date;
- (b) subject to conditions;
- (c) granted generally or to a person or persons named or described in the licence;
- (d) granted in relation to frozen funds generally or to funds of a description specified in the licence.

(5) A licence may authorise funds to be made available—

- (a) generally or for purposes specified in the licence;
 - (b) to or for the benefit of persons generally or a person or persons named or described in the licence.
- (6) The Treasury may vary or revoke a licence at any time.
- (7) The Treasury, where they grant, vary or revoke a licence, must—
- (a) in the case of a licence granted to a particular person give written notice of the licence, variation or revocation to that person, and
 - (b) in the case of a general licence or a licence granted to a category of persons, take such steps as the Treasury consider appropriate to publicise the licence, variation or revocation.

Licensing procedure

- 7.—(1) A person applying for a licence must—
- (a) apply in writing; and
 - (b) include such documentation and information that may be required for taking the relevant licensing decision.
- (2) The Treasury—
- (a) are not required to consider an application which is incomplete; but
 - (b) if an application is incomplete, must inform the applicant of the further documentation or information required.
- (3) The Treasury may grant a licence without an application having been made.
- (4) The Treasury may authorise a person to grant licences on their behalf.
- (5) A person who provides information, or produces a document, which he or she knows is false in a material particular with a view to obtaining a licence is guilty of an offence.
- (6) A person who recklessly provides information, or produces a document, which is false in a material particular with a view to obtaining a licence is guilty of an offence.

Information

8. The Schedule (which contains provisions concerning information and documents, and their disclosure) has effect.

Penalties

- 9.—(1) A person guilty of an offence under article 5 is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
 - (b) on summary conviction—
 - (i) to imprisonment for a term not exceeding six months; or
 - (ii) to a fine which in Scotland or Northern Ireland may not exceed the statutory maximum,
- or to both.
- (2) A person guilty of an offence under article 7 or under the Schedule is liable on summary conviction—
- (a) to imprisonment for a term not exceeding six months; or
 - (b) to a fine which in Scotland or Northern Ireland may not exceed level 5 on the standard scale,
- or to both.

Offences: procedure

10.—(1) Proceedings for an offence under this Order are not to be instituted in England and Wales except by or with the consent of the Treasury or the Director of Public Prosecutions.

(2) Proceedings for an offence under this Order are not to be instituted in Northern Ireland except by or with the consent of the Treasury or the Director of Public Prosecutions for Northern Ireland.

(3) Despite anything in section 127(1) of the Magistrates' Courts Act 1980^(a) (information to be laid within 6 months of offence) an information relating to an offence under this Order which is triable by a magistrates' court in England and Wales may be so tried if it is laid at any time in the period of one year starting with the date of the commission of the offence.

(4) In Scotland summary proceedings for an offence under this Order may be commenced at any time in the period of one year starting with the date of the commission of the offence.

(5) In its application to an offence under this Order Article 19(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981^(b) (time limit within which complaint charging offence must be made) is to have effect as if the reference to six months were a reference to twelve months.

Offences by bodies corporate etc.

11.—(1) If an offence under this Order—

- (a) is committed by a body corporate, and
- (b) is proved to have been committed with the consent or connivance of an officer, or to be attributable to any neglect on his or her part,

he or she as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) For the purpose of paragraph (1) these are officers of a body corporate—

- (a) a director, manager, secretary or other similar officer of the body;
- (b) any person purporting to act in any such capacity;
- (c) in the case of a Scottish partnership, a partner.

(3) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were an officer of the body.

Notices

12.—(1) This article has effect in relation to any notice to be given to a person by the Treasury under article 6.

(2) Any such notice may be given—

- (a) by posting it to his or her last known address; or
- (b) where the person is a body corporate, by posting it to the registered or principal office of the body corporate.

(3) Where the Treasury do not have an address for the person, they must make arrangements for the notice to be given to him or her at the first available opportunity.

Mel Stride
George Hollingbery

At 9.30 a.m. on 22nd January 2016 Two of the Lords Commissioners of Her Majesty's Treasury

(a) 1980 c.43.

(b) S.I. 1980/1675 (N.I. 26).

SCHEDULE

Article 8

1.—(1) The Treasury may, in writing, request a person to provide information or produce documentation to them which they may reasonably need for the purpose of ascertaining whether an offence has been committed under this Order.

(2) The request may be made by the Treasury or by a person authorised by the Treasury.

(3) Any person to whom a request is made under sub-paragraph (1) must comply with it within 14 days and in such manner as may be specified in the request.

2. A relevant institution must disclose to the Treasury information as soon as practicable if the conditions in paragraph 3 are satisfied.

3.—(1) The conditions are that—

(a) the relevant institution knows or suspects, or has grounds for knowing or suspecting, that a specified person—

(i) is a customer or has been a customer of the institution at any time since this Order came into force, or

(ii) is a person with whom it has dealings in the course of its business or has had such dealings at any time since this Order came into force.

(b) the information—

(i) on which the knowledge or suspicion of the relevant institution required to disclose is based, or

(ii) which gives grounds for the knowledge or suspicion,

came to the relevant institution in the course of a business in the regulated sector.

(2) For the purposes of this paragraph, Schedule 3A to the Terrorism Act 2000^(a) is to have effect for the purpose of determining what is a business in the regulated sector.

4. Disclosure of information in accordance with this Schedule is not to be taken to breach any restriction on the disclosure of information (however imposed).

5.—(1) This Schedule does not require any person to provide information or produce documentation which is privileged.

(2) Information and documentation is privileged if the person asked to provide or produce it would be entitled to refuse to do so on grounds of legal professional privilege in proceedings in the High Court or (in Scotland) on grounds of confidentiality of communications in proceedings in the Court of Session.

(3) But information or documentation held with the intention of furthering a criminal purpose is not privileged.

6. A person who —

(a) fails without reasonable excuse to provide information, or to produce a document, in response to a requirement in or under this Schedule;

(b) provides information, or produces a document, which he or she knows is false in a material particular in response to a requirement in or under this Schedule;

(c) recklessly provides information, or produces a document, which is false in a material particular in response to a requirement in or under this Schedule;

(d) fails without reasonable excuse to disclose information as required under paragraph 3,

(a) 2000 c.11. Schedule 3A was inserted by paragraph 5(6) of Schedule 2 to the Anti-Terrorism, Crime and Security Act 2001 c.24.

is guilty of an offence.

7.—(1) The Treasury may disclose any information given or documentation produced under this Order (including any copy or extract made of any such document)—

- (a) to a police officer;
- (b) to any person holding or acting in any office under or in the service of—
 - (i) the Crown in right of the Government of the United Kingdom,
 - (ii) the Crown in right of the Scottish Administration, the Northern Ireland Administration or the Welsh Government,
 - (iii) the States of Jersey, Guernsey or Alderney or the Chief Pleas of Sark,
 - (iv) the Government of the Isle of Man, or
 - (v) the Government of any British overseas territory;
- (c) to any law officer of the Crown for Jersey, Guernsey or the Isle of Man;
- (d) to the Legal Services Commission, the Scottish Legal Aid Board or the Northern Ireland Legal Services Commission;
- (e) to the Financial Conduct Authority, the Prudential Regulation Authority, the Bank of England, the Jersey Financial Services Commission, the Guernsey Financial Services Commission, the Isle of Man Insurance and Pensions Authority or the Isle of Man Financial Supervision Commission;
- (f) to any other regulatory body;
- (g) with a view to instituting, or otherwise for the purposes of, any proceedings—
 - (i) in the United Kingdom, for an offence under this Order, or
 - (ii) in any of the Channel Islands, the Isle of Man or any British overseas territory, for an offence under a similar provision in any such jurisdiction.

(2) The Treasury may disclose any information obtained by them pursuant to this Order to any person with the consent of a person who, in their own right, is entitled to the information or to possession of the document, copy or extract.

(3) In sub-paragraph (2) “in their own right” means not merely in the capacity as a servant or agent of another person.

8. Where a person is convicted of an offence under paragraph 6 of this Schedule the court may make an order requiring that person, within such period as may be specified in the order, to give the requested information or to produce the requested document.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under the Anti-terrorism, Crime and Security Act 2001 (c.24) to impose a freeze on funds in relation to Andrey Lugovoy (AL) and Dmitri Kovtun (DK).

Article 3 provides that a specified person may request the reason why they are specified.

Article 4 prohibits any person from making funds available to or for the benefit of AL or DK. It also makes provision prohibiting anyone, including AL and DK, from dealing with funds owned, controlled or held by AL or DK.

Article 5 makes it an offence to breach the prohibition on making funds available or to engage in activity knowing or intending that it will enable or facilitate the commission of such an offence, subject to a defence based on no knowledge or reasonable suspicion of the relevant circumstances.

Article 6 provides for the Treasury to be able to grant licences to disapply the prohibitions and article 7 makes provision in relation to licensing procedure.

Article 8 gives effect to the Schedule which makes provision about information and disclosure of information.

Article 9 sets the penalties for offences under the Order, article 10 makes provision relating to criminal proceedings and article 11 relates to offences by bodies corporate and Scottish partnerships.

Article 12 makes provision about the service of notices.

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