

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

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

*These notes refer to the Terrorist Asset-Freezing etc. Act 2010
(c.38) which received Royal Assent on 16 December 2010*

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.