

*Status: Point in time view as at 01/10/2009.*

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## SCHEDULES

### SCHEDULE 1 U.K.

Section 20

#### DISCLOSURE AND THE INTELLIGENCE SERVICES: CONSEQUENTIAL AMENDMENTS

##### *Anti-terrorism, Crime and Security Act 2001 (c. 24)*

- 1 In section 19(2) of the Anti-terrorism, Crime and Security Act 2001 (disclosure of information held by revenue departments), omit paragraph (a).

#### **Commencement Information**

- II** Sch. 1 para. 1 in force at 24.12.2008 by S.I. 2008/3296, art. 2

##### *Representation of the People (England and Wales) Regulations 2001 (S.I. 2001/341)*

- 2 (1) The Representation of the People (England and Wales) Regulations 2001 are amended as follows.
- (2) In regulation 45E (supply of record of anonymous entries to the security services), omit paragraphs (3) and (4).
- (3) In regulation 102(6) (supply of full register: general restrictions on use), for “regulations 103 to 109” substitute “regulations 103 to 108 or 109”.
- (4) After regulation 108 insert—

#### **Supply of full register etc to the security services**

“108A) This regulation applies to—

- (a) the Security Service;  
(b) the Government Communications Headquarters;  
(c) the Secret Intelligence Service.

(2) For the purposes of regulation 102(1) above the relevant part of the documents listed in that provision is the whole of them.”.

- (5) In regulation 109 (supply of full register etc to police force and other agencies and restrictions on use), omit—
- (a) paragraph (1)(g) to (i);  
(b) in paragraph (4)(a), the words preceding paragraph (i);  
(c) paragraph (4)(b) and the word “and” immediately preceding it.
- (6) In regulation 113 (sale of full register to government departments and other bodies)—
- (a) in the closing words of paragraph (1), after “other than” insert “a department to which regulation 108A applies or”;

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- (b) in paragraph (3) for “regulation 109(1)(g) to (i),” substitute “regulation 108A”.
- (7) In regulation 115(2) (offences) omit “45E(3),”.
- (8) For regulation 118(8) (provision of copies of documents open to public inspection) substitute insert—
- “(8) The relevant registration officer shall, on request, supply free of charge copies of any documents open to public inspection—
- (a) to each of the departments mentioned in regulation 108A;
- (b) to a person who has inspected those documents and who is entitled to be supplied with a copy of the marked register or lists by virtue of being a person to whom regulation 109 applies.”.
- (9) In regulation 119(3) for “regulation 118(8)” substitute “regulation 118(8)(b)”.

**Commencement Information**

**I2** Sch. 1 para. 2 in force at 24.12.2008 by S.I. 2008/3296, art. 2

*Representation of the People (Scotland) Regulations 2001 (S.I. 2001/497)*

- 3 (1) The Representation of the People (Scotland) Regulations 2001 are amended as follows.
- (2) In regulation 45D (supply of record of anonymous entries to the security services), omit paragraphs (3) and (4).
- (3) In regulation 101(6) (supply of full register: general restrictions on use), for “regulations 102 to 108” substitute “regulations 102 to 107 or 108”.
- (4) After regulation 107 insert—

**Supply of full register etc to the security services**

- “107A) This regulation applies to—
- (a) the Security Service;
- (b) the Government Communications Headquarters;
- (c) the Secret Intelligence Service.
- (2) For the purposes of regulation 101(1) above the relevant part of the documents listed in that provision is the whole of them.”.
- (5) In regulation 108 (supply of full register etc to police force and other agencies and restrictions on use), omit—
- (a) paragraph (1)(g) to (i);
- (b) in paragraph (4)(a), the words preceding paragraph (i);
- (c) paragraph (4)(b) and the word “and” immediately preceding it.
- (6) In regulation 112 (sale of full register to government departments and other bodies)—
- (a) in the closing words of paragraph (1), after “other than” insert “a department to which regulation 107A applies or”;

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- (b) in paragraph (3) for “regulation 108(1)(g) to (i),” substitute “regulation 107A”.
- (7) In regulation 115(2) (offences) omit “45D(3),”.
- (8) For regulation 118(8) (provision of copies of documents open to public inspection) substitute—
- “(8) The relevant registration officer shall, on request, supply free of charge copies of any documents open to public inspection—
- (a) to each of the departments mentioned in regulation 107A;
- (b) to a person who has inspected those documents and who is entitled to be supplied with a copy of the marked register or lists by virtue of being a person to whom regulation 108 applies.”.
- (9) In regulation 119(3) for “regulation 118(8)” substitute “regulation 118(8)(b)”.

**Commencement Information**

**I3** Sch. 1 para. 3 in force at 24.12.2008 by S.I. 2008/3296, art. 2

*Immigration, Asylum and Nationality Act 2006 (c. 13)*

- 4 In the Immigration, Asylum and Nationality Act 2006, omit section 38 (disclosure of information for security purposes).

**Commencement Information**

**I4** Sch. 1 para. 4 in force at 24.12.2008 by S.I. 2008/3296, art. 2

*Statistics and Registration Service Act 2007 (c. 18)*

- 5 In the Statistics and Registration Service Act 2007, omit—
- (a) section 39(4)(g) (permitted disclosure of personal information: disclosure to an Intelligence Service); and
- (b) in section 67 (general interpretation), the definition of “Intelligence Service”.

**Commencement Information**

**I5** Sch. 1 para. 5 in force at 24.12.2008 by S.I. 2008/3296, art. 2

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Sections 30, 31, 33, 35 and 42

## OFFENCES WHERE TERRORIST CONNECTION TO BE CONSIDERED

**Commencement Information****I6** Sch. 2 in force at 18.6.2009 by [S.I. 2009/1256](#), [art. 2\(b\)](#)*Common law offences*

Murder.  
 Manslaughter.  
 Culpable homicide.  
 Kidnapping.  
 Abduction.

*Statutory offences*

An offence under any of the following sections of the Offences against the Person Act 1861 (c. 100)—

- (a) section 4 (soliciting murder),
- (b) section 23 (maliciously administering poison etc so as to endanger life or inflict grievous bodily harm),
- (c) section 28 (causing bodily injury by explosives),
- (d) section 29 (using explosives etc with intent to do grievous bodily harm),
- (e) section 30 (placing explosives with intent to do bodily injury),
- (f) section 64 (making or having gunpowder etc with intent to commit or enable any person to commit any felony mentioned in the Act).

An offence under any of the following sections of the Explosive Substances Act 1883 (c. 3)—

- (a) section 2 (causing explosion likely to endanger life or property),
- (b) section 3 (attempt to cause explosion or making or keeping explosive with intent to endanger life or property),
- (c) section 4 (making or possession of explosive under suspicious circumstances),
- (d) section 5 (punishment of accessories).

An offence under section 1 of the Biological Weapons Act 1974 (c. 6) (restriction on development etc of certain biological agents and toxins and of biological weapons).

An offence under section 1 of the Taking of Hostages Act 1982 (c. 28) (hostage-taking).

An offence under any of the following sections of the Aviation Security Act 1982 (c. 36)—

- (a) section 1 (hijacking),
- (b) section 2 (destroying, damaging or endangering safety of aircraft),
- (c) section 3 (other acts endangering or likely to endanger safety of aircraft),
- (d) section 4 (offences in relation to certain dangerous articles),
- (e) section 6(2) (inducing or assisting commission of offence under section 1, 2 or 3 outside the United Kingdom).

An offence under any of the following sections of the Nuclear Material (Offences) Act 1983 (c. 18)—

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- (a) section 1B (offences relating to damage to the environment),
- (b) section 1C (offences of importing or exporting etc nuclear materials: extended jurisdiction),
- (c) section 2 (offences involving preparatory acts and threats), so far as relating to an offence specified in this Schedule.

An offence under any of the following sections of the Aviation and Maritime Security Act 1990 (c. 31)—

- (a) section 1 (endangering safety at aerodromes),
- (b) section 9 (hijacking of ships),
- (c) section 10 (seizing or exercising control of fixed platforms),
- (d) section 11 (destroying ships or fixed platforms or endangering their safety),
- (e) section 14(4) (inducing or assisting the commission of an offence outside the United Kingdom), so far as relating to an offence under section 9 or 11 of that Act.

An offence under Part 2 of the Channel Tunnel (Security) Order 1994 (S.I. 1994/570) (offences against the safety of channel tunnel trains and the tunnel system).

An offence under any of the following sections of the Chemical Weapons Act 1996 (c. 6)—

- (a) section 2 (use etc of chemical weapons),
- (b) section 11 (premises or equipment for producing chemical weapons).

An offence under any of the following sections of the Anti-Terrorism, Crime and Security Act 2001 (c. 24)—

- (a) section 47 (use etc of nuclear weapons),
- (b) section 114 (hoaxes involving noxious substances or things).

#### *Ancillary offences*

Any ancillary offence in relation to an offence specified in this Schedule.

### SCHEDULE 3 **U.K.**

Section 39

#### FORFEITURE: CONSEQUENTIAL AMENDMENTS

*Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9))*

- 1 In Article 5(3) of the Proceeds of Crime (Northern Ireland) Order 1996, after “section 23” insert “ or 23A ”.

#### **Commencement Information**

**I7** Sch. 3 para. 1 in force at 18.6.2009 by S.I. 2009/1256, art. 2(c)

*Terrorism Act 2000 (c. 11)*

- 2 In section 54 of the Terrorism Act 2000, omit subsections (7) to (9).

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**Commencement Information**

**I8** Sch. 3 para. 2 in force at 18.6.2009 by S.I. 2009/1256, art. 2(c)

3 In section 58 of that Act, omit subsections (5) to (7).

**Commencement Information**

**I9** Sch. 3 para. 3 in force at 18.6.2009 by S.I. 2009/1256, art. 2(c)

4 In section 119(1) of that Act for “sections 15 to 23” substitute “ sections 15 to 23A ”.

**Commencement Information**

**I10** Sch. 3 para. 4 in force at 18.6.2009 by S.I. 2009/1256, art. 2(c)

5 (1) Schedule 4 to that Act is amended as follows.

(2) In paragraph 1—

- (a) in the definition of “forfeiture order” after “section 23” insert “ or 23A ”;
- (b) after the definition of “forfeited property” insert—

““relevant offence” means—

- (a) an offence under any of sections 15 to 18,
- (b) an offence to which section 23A applies, or
- (c) in relation to a restraint order, any offence specified in Schedule 2 to the Counter-Terrorism Act 2008 (offences where terrorist connection to be considered).”.

(3) In paragraph 2(1)(d) for “section 23(7)” substitute “ section 23B(1) ”.

(4) In paragraph 4(2)(c) for “section 23(7)” substitute “ section 23B(1) ”.

(5) In paragraph 5(1)(a) and (2)(a) for “an offence under any of sections 15 to 18” substitute “ a relevant offence ”.

(6) In paragraph 6(4)(a) and (b) for “offences under any of sections 15 to 18” substitute “ relevant offences ”.

(7) Omit the heading before paragraph 9.

(8) In paragraph 9(2)—

- (a) in the opening words, for “an offence under any of sections 15 to 18” substitute “ a relevant offence ”;
- (b) in paragraphs (a), (b) and (c), for “an offence under any of those sections” substitute “ a relevant offence ”.

(9) In paragraph 10(1)(a) for “an offence under any of sections 15 to 18” substitute “ a relevant offence ”.

(10) In paragraph 12 after “section 23”, in each place where it occurs, insert “ or 23A ”.

(11) In paragraph 15—

- (a) in the definition of “forfeiture order” after “section 23” insert “ or 23A ”;

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- (b) after the definition of “forfeited property” insert—
- ““relevant offence” means—
- (a) an offence under any of sections 15 to 18,
  - (b) an offence to which section 23A applies, or
  - (c) in relation to a restraint order, any offence specified in Schedule 2 to the Counter-Terrorism Act 2008 (offences where terrorist connection to be considered).”.
- (12) In paragraph 16(1)(c) and (4)(c) for “section 23(7)” substitute “ section 23B(1) ”.
- (13) In paragraph 18(1)(a) and (2)(a) for “an offence under any of sections 15 to 18” substitute “ a relevant offence ”.
- (14) In paragraph 19(3A)(a) and (b) for “offences under any of sections 15 to 18” substitute “ relevant offences ”.
- (15) Omit the heading before paragraph 23.
- (16) In paragraph 23(2)—
- (a) in the opening words for “an offence under any of sections 15 to 18” substitute “ a relevant offence ”;
  - (b) in paragraphs (a), (b) and (c) for “an offence under any of those sections” substitute “ a relevant offence ”.
- (17) In paragraph 24(1)(a) for “an offence under any of sections 15 to 18” substitute “ a relevant offence ”.
- (18) In paragraph 26 after “section 23”, in each place where it occurs, insert “ or 23A ”.
- (19) In paragraph 29—
- (a) in the definition of “forfeiture order” after “section 23” insert “ or 23A ”;
  - (b) after the definition of “forfeited property” insert—
- ““relevant offence” means—
- (a) an offence under any of sections 15 to 18, or
  - (b) an offence to which section 23A applies.”.
- (20) In paragraph 30(1)(d) for “section 23(7)” substitute “ section 23B(1) ”.
- (21) In paragraph 32(2)(c) for “section 23(7)” substitute “ section 23B(1) ”.
- (22) In paragraph 33(1)(a) and (2)(a) for “an offence under any of sections 15 to 18” substitute “ a relevant offence ”.
- (23) In paragraph 34(4)(a) and (b) for “offences under any of sections 15 to 18” substitute “ relevant offences ”.
- (24) In paragraph 38(4), in the definition of “prosecutor” for “an offence under any of sections 15 to 18” substitute “ a relevant offence ”.
- (25) Omit the heading before paragraph 39.
- (26) In paragraph 39(2)—
- (a) in the opening words for “an offence under any of sections 15 to 18” substitute “ a relevant offence ”;

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- (b) in paragraphs (a), (b) and (c) for “an offence under any of those sections” substitute “ a relevant offence ”.
- (27) In paragraph 40(1)(a) for “an offence under any of sections 15 to 18” substitute “ a relevant offence ”.
- (28) In paragraph 42 after “section 23”, in each place where it occurs, insert “ or 23A ”.
- (29) In paragraph 45, in paragraph (a) of the definition of “forfeiture order” after “section 23” insert “ or 23A ”.

**Commencement Information**

**I11** Sch. 3 para. 5 in force at 18.6.2009 by S.I. 2009/1256, art. 2(c)

- 6 In Schedule 8 to that Act, in paragraphs 8(4)(d), 17(3)(c) and 34(2)(c) after “section 23” insert “ or 23A ”.

**Commencement Information**

**I12** Sch. 3 para. 6 in force at 18.6.2009 by S.I. 2009/1256, art. 2(c)

*Proceeds of Crime Act 2002 (c. 29)*

- 7 (1) The Proceeds of Crime Act 2002 is amended as follows.
- (2) In section 13(3)(d) after “section 23” insert “ or 23A ”.
- (3) In section 82(e) after “section 23” insert “ , 23A ”.
- (4) In section 97(3)(d) after “section 23” insert “ or 23A ”.
- (5) In section 148(e) after “section 23” insert “ , 23A ”.
- (6) In section 163(3)(d) after “section 23” insert “ or 23A ”.
- (7) In section 230(e) after “section 23” insert “ , 23A ”.

**Commencement Information**

**I13** Sch. 3 para. 7 in force at 18.6.2009 by S.I. 2009/1256, art. 2(c)

*Introductory*

- 1 A “notification order” is an order applying the notification requirements of this Part to a person who has been dealt with outside the United Kingdom in respect of a corresponding foreign offence.



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#### Commencement Information

**I14** Sch. 4 para. 1 in force at 1.10.2009 by S.I. 2009/1493, art. 2(b)

#### *Corresponding foreign offences*

- 2 (1) A “corresponding foreign offence” means an act that—
- (a) constituted an offence under the law in force in a country outside the United Kingdom, and
  - (b) corresponds to an offence to which this Part applies.
- (2) For this purpose an act punishable under the law in force in a country outside the United Kingdom is regarded as constituting an offence under that law however it is described in that law.
- (3) An act corresponds to an offence to which this Part applies if—
- (a) it would have constituted an offence to which this Part applies by virtue of section 41 if it had been done in any part of the United Kingdom, or
  - (b) it was, or took place in the course of, an act of terrorism or was done for the purposes of terrorism.
- (4) On an application for a notification order the condition in sub-paragraph (3)(a) or (b) is to be taken to be met unless—
- (a) the defendant serves on the applicant, not later than rules of court may provide, a notice—
    - (i) stating that, on the facts as alleged with respect to the act concerned, the condition is not in the defendant's opinion met,
    - (ii) showing the defendant's grounds for that opinion, and
    - (iii) requiring the applicant to prove that the condition is met; or
  - (b) the court permits the defendant to require the applicant to prove that the condition is met without service of such a notice.
- (5) In the application of this paragraph in Scotland, for “defendant” substitute “respondent”.

#### Commencement Information

**I15** Sch. 4 para. 2 in force at 1.10.2009 by S.I. 2009/1493, art. 2(b)

#### *Conditions for making a notification order*

- 3 (1) The conditions for making a notification order in respect of a person are as follows.
- (2) The first condition is that under the law in force in a country outside the United Kingdom—
- (a) the person has been convicted of a corresponding foreign offence and has received in respect of the offence a sentence equivalent to a sentence mentioned in section 45(1)(a), (2)(a) or (3)(a), or
  - (b) a court exercising jurisdiction under that law has, in respect of a corresponding foreign offence—

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- (i) convicted the person or made a finding in relation to the person equivalent to a finding mentioned in section 45(1)(b)(ii) or (iii), (2)(b)(ii) or (iii) or (3)(b)(ii) or (iii) (finding of insanity or disability), and
  - (ii) made the person subject to an order equivalent to a hospital order.
- (3) This condition is not met if there was a flagrant denial of the person's right to a fair trial.
- (4) The second condition is that—
- (a) the sentence was imposed or order made after the commencement of this Part, or
  - (b) the sentence was imposed or order made before the commencement of this Part and immediately before that time the person—
    - (i) was imprisoned or detained in pursuance of the sentence or order,
    - (ii) would have been so imprisoned or detained but for being unlawfully at large or otherwise unlawfully absent, lawfully absent on a temporary basis or on bail pending an appeal, or
    - (iii) had been released on licence, or was subject to an equivalent form of supervision, having served the whole or part of a sentence of imprisonment for the offence.
- (5) The third condition is that the period for which the notification requirements would apply in respect of the offence (in accordance with section 53 as modified by paragraph 8(e)) has not expired.
- (6) If on an application for a notification order it is proved that the conditions in subparagraphs (2), (4) and (5) are met, the court must make the order.

#### Commencement Information

**I16** Sch. 4 para. 3 in force at 1.10.2009 by S.I. 2009/1493, art. 2(b)

#### *Application for notification order*

- 4 (1) In England and Wales an application for a notification order in respect of a person may only be made by a chief officer of police.
- (2) An application may only be made if—
- (a) the person resides in the chief officer's police area, or
  - (b) the chief officer believes that the person is in, or is intending to come to, that area.
- (3) The application must be made to the High Court.

#### Commencement Information

**I17** Sch. 4 para. 4 in force at 1.10.2009 by S.I. 2009/1493, art. 2(b)

- 5 (1) In Scotland an application for a notification order in respect of a person may only be made by a chief constable.

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- (2) An application may only be made if—
  - (a) the person resides in the area of the chief constable's police force, or
  - (b) the chief constable believes that the person is in, or is intending to come to, that area.
- (3) The application must be made to the Court of Session.

**Commencement Information**

**I18** Sch. 4 para. 5 in force at 1.10.2009 by S.I. 2009/1493, art. 2(b)

- 6 (1) In Northern Ireland an application for a notification order in respect of a person may only be made by the Chief Constable of the Police Service of Northern Ireland.
- (2) An application may only be made if—
  - (a) the person resides in Northern Ireland, or
  - (b) the Chief Constable believes that the person is in, or is intending to come to, Northern Ireland.
- (3) The application must be made to the High Court.

**Commencement Information**

**I19** Sch. 4 para. 6 in force at 1.10.2009 by S.I. 2009/1493, art. 2(b)

*Effect of notification order*

- 7 The effect of a notification order is that the notification requirements of this Part apply to the person in respect of whom it is made.

**Commencement Information**

**I20** Sch. 4 para. 7 in force at 1.10.2009 by S.I. 2009/1493, art. 2(b)

*Adaptation of provisions of this Part in relation to foreign proceedings*

- 8 The provisions of this Part have effect with the following adaptations in relation to foreign proceedings and cases where the notification requirements apply because a notification order has been made—
  - (a) in section 61(1) (references to dealing with an offence) for “being sentenced, or made subject to a hospital order” substitute “being made subject by the foreign court to a sentence or order within paragraph 3(2) (a) or (b) of Schedule 4”;
  - (b) in section 61(2) (references to time when person dealt with for an offence) for paragraphs (a) to (c) substitute “by the foreign court of first instance”;
  - (c) for the purposes of section 47 (initial notification) the period within which notification is to be made begins with the date of service of the notification order;

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- (d) in section 51 (meaning of “local police area”) the reference in subsection (1) (c) to the court of trial shall be read as a reference to the court by which the notification order was made;
- (e) in section 53 (period for which notification requirements apply) a reference to a sentence or order of any description is to be read as a reference to an equivalent sentence or order of the foreign court.

**Commencement Information**

**I21** Sch. 4 para. 8 in force at 1.10.2009 by S.I. 2009/1493, art. 2(b)

SCHEDULE 5 **U.K.**

Section 58

FOREIGN TRAVEL RESTRICTION ORDERS

*Introductory*

- 1 A foreign travel restriction order is an order prohibiting the person to whom it applies from doing whichever of the following is specified in the order—
- (a) travelling to a country outside the United Kingdom named or described in the order;
  - (b) travelling to any country outside the United Kingdom other than a country named or described in the order;
  - (c) travelling to any country outside the United Kingdom.

**Commencement Information**

**I22** Sch. 5 para. 1 in force at 1.10.2009 by S.I. 2009/1493, art. 2(c)

*Conditions for making a foreign travel restriction order*

- 2 (1) The conditions for making a foreign travel restriction order in respect of a person are as follows.
- (2) The first condition is that the notification requirements apply to the person.
  - (3) The second condition is that the person's behaviour since the person was dealt with for the offence by virtue of which those requirements apply makes it necessary for a foreign travel restriction order to be made to prevent the person from taking part in terrorism activity outside the United Kingdom.
  - (4) If the person was dealt with for the offence before the commencement of this Part, the condition in sub-paragraph (3) is not met unless the person has acted in that way since the commencement of this Part.
  - (5) If on an application for a foreign travel restriction order the court is satisfied that the conditions in sub-paragraphs (2) and (3) are met, it may make a foreign travel restriction order.

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**Commencement Information**

**I23** Sch. 5 para. 2 in force at 1.10.2009 by S.I. 2009/1493, art. 2(c)

*Application for foreign travel restriction order*

- 3
- (1) In England and Wales an application for a foreign travel restriction order in respect of a person may only be made by a chief officer of police.
  - (2) An application may only be made if—
    - (a) the person resides in the chief officer's police area, or
    - (b) the chief officer believes that the person is in, or is intending to come to, that area.
  - (3) The application must be made by complaint to a magistrates' court whose commission area includes any part of the chief officer's police area.

**Commencement Information**

**I24** Sch. 5 para. 3 in force at 1.10.2009 by S.I. 2009/1493, art. 2(c)

- 4
- (1) In Scotland an application for a foreign travel restriction order in respect of a person may only be made by a chief constable.
  - (2) An application may only be made if—
    - (a) the person resides in the area of the chief constable's police force, or
    - (b) the chief constable believes that the person is in, or is intending to come to, that area.
  - (3) The application must be made by summary application to a sheriff within whose sheriffdom any part of the area of the chief constable's police force lies.
  - (4) A record of evidence is to be kept on any such summary application.
  - (5) Where the sheriff makes a foreign travel restriction order, the clerk of the court must give a copy of the order to the respondent or send a copy to the respondent by registered post or the recorded delivery service.
  - (6) An acknowledgement or certificate of delivery issued by the Post Office is sufficient evidence of the delivery of the copy on the day specified in the acknowledgement or certificate.

**Commencement Information**

**I25** Sch. 5 para. 4 in force at 1.10.2009 by S.I. 2009/1493, art. 2(c)

- 5
- (1) In Northern Ireland an application for a foreign travel restriction order in respect of a person may only be made by the Chief Constable of the Police Service of Northern Ireland.
  - (2) An application may only be made if—
    - (a) the person resides in Northern Ireland, or

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- (b) the Chief Constable believes that the person is in, or is intending to come to, Northern Ireland.
- (3) The application must be made by complaint under Part 8 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) to a court of summary jurisdiction.

#### Commencement Information

**I26** Sch. 5 para. 5 in force at 1.10.2009 by S.I. 2009/1493, art. 2(c)

#### *Provisions of a foreign travel restriction order*

- 6 (1) A foreign travel restriction order may prohibit the person to whom it applies—
  - (a) from travelling to any country outside the United Kingdom named or described in the order; or
  - (b) from travelling to any country outside the United Kingdom other than a country named or described in the order; or
  - (c) from travelling to any country outside the United Kingdom.
- (2) The order must only impose such prohibitions as are necessary for the purpose of preventing the person from taking part in terrorism activity outside the United Kingdom.
- (3) A foreign travel restriction order containing a prohibition within sub-paragraph (1) (c) must require the person to whom it applies to surrender all that person's passports, at a police station specified in the order—
  - (a) on or before the date when the prohibition takes effect, or
  - (b) within a period specified in the order.
- (4) Any passports surrendered must be returned as soon as reasonably practicable after the person ceases to be subject to a foreign travel restriction order containing such a prohibition.

#### Commencement Information

**I27** Sch. 5 para. 6 in force at 1.10.2009 by S.I. 2009/1493, art. 2(c)

#### *Duration of foreign travel restriction order*

- 7 (1) A foreign travel restriction order has effect for a fixed period of not more than 6 months.
- (2) The period must be specified in the order.
- (3) A foreign travel restriction order ceases to have effect if a court (whether the same or another court) makes another foreign travel restriction order in relation to the person to whom the earlier order applies.

*Status: Point in time view as at 01/10/2009.*

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**Commencement Information**

**I28** Sch. 5 para. 7 in force at 1.10.2009 by S.I. 2009/1493, art. 2(c)

*Variation, renewal or discharge of order*

- 8 (1) In England and Wales an application for an order varying, renewing or discharging a foreign travel restriction order may be made by—
- (a) the person subject to the order;
  - (b) the chief officer of police on whose application the order was made;
  - (c) the chief officer of police for the area in which the person subject to the order resides; or
  - (d) a chief officer of police who believes that the person subject to the order is in, or is intending to come to, the officer's police area.
- (2) The application must be made by complaint to—
- (a) a magistrates' court for the same area as the court that made the order,
  - (b) a magistrates' court for the area in which the person subject to the order resides, or
  - (c) where the application is made by a chief officer of police, any magistrates' court whose commission area includes any part of that chief officer's police area.
- (3) On an application under this paragraph the court may make such order varying, renewing or discharging the foreign travel restriction order as it considers appropriate.
- (4) Before doing so it must hear the person making the application and (if they wish to be heard) the other persons mentioned in sub-paragraph (1).

**Commencement Information**

**I29** Sch. 5 para. 8 in force at 1.10.2009 by S.I. 2009/1493, art. 2(c)

- 9 (1) In Scotland an application for an order varying, renewing or discharging a foreign travel restriction order may be made by—
- (a) the person subject to the order;
  - (b) the chief constable on whose application the order was made;
  - (c) the chief constable in the area of whose police force the person subject to the order resides; or
  - (d) a chief constable who believes that the person subject to the order is in, or is intending to come to, the area of that chief constable's police force.
- (2) The application must be made by summary application—
- (a) to the sheriff who made the order, or
  - (b) to a sheriff—
    - (i) within whose sheriffdom the person subject to the order resides, or
    - (ii) where the application is made by a chief constable, within whose sheriffdom any part of the area of the chief constable's police force lies.

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- (3) A record of evidence is to be kept on any summary application under this paragraph.
- (4) On an application under this paragraph the sheriff may make such order varying, renewing or discharging the foreign travel restriction order as the sheriff considers appropriate.
- (5) Before doing so the sheriff must hear the person making the application and (if they wish to be heard) the other persons mentioned in sub-paragraph (1).

**Commencement Information**

**I30** Sch. 5 para. 9 in force at 1.10.2009 by S.I. 2009/1493, art. 2(c)

- 10 (1) In Northern Ireland an application for an order varying, renewing or discharging a foreign travel restriction order may be made by—
  - (a) the person subject to the order; or
  - (b) the Chief Constable of the Police Service of Northern Ireland.
- (2) The application must be made by complaint under Part 8 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) to a court of summary jurisdiction for the petty sessions district which includes the area where the person subject to the order resides.
- (3) On an application under this paragraph the court may make such order varying, renewing or discharging the foreign travel restriction order as it considers appropriate.
- (4) It may do so only after hearing the person making the application and (if they wish to be heard) the other person mentioned in sub-paragraph (1).

**Commencement Information**

**I31** Sch. 5 para. 10 in force at 1.10.2009 by S.I. 2009/1493, art. 2(c)

*Provisions of renewed or varied order*

- 11 (1) A foreign travel restriction order may be renewed, or varied so as to impose additional prohibitions, but only if it is necessary to do so for the purpose of preventing the person subject to the order from taking part in terrorism activities outside the United Kingdom.
- (2) Any renewed or varied order must contain only the prohibitions necessary for that purpose.

**Commencement Information**

**I32** Sch. 5 para. 11 in force at 1.10.2009 by S.I. 2009/1493, art. 2(c)

*Appeals*

- 12 (1) In England and Wales—



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- (a) a person against whom a foreign travel restriction order is made may appeal against the making of the order;
  - (b) a person subject to a foreign travel restriction order may appeal against—
    - (i) an order under paragraph 8 varying or renewing the order, or
    - (ii) a refusal to make an order under that paragraph varying or discharging the order.
- (2) The appeal lies to the Crown Court.
- (3) On an appeal under this paragraph the court may make—
- (a) such orders as it considers necessary to give effect to its determination of the appeal, and
  - (b) such incidental and consequential orders as appear to it to be just.

**Commencement Information**

**I33** Sch. 5 para. 12 in force at 1.10.2009 by S.I. 2009/1493, art. 2(c)

- 13 (1) In Scotland an interlocutor of the sheriff granting or refusing a foreign travel restriction order, or an order under paragraph 9 (variation, renewal or discharge of foreign travel restriction order), is appealable.
- (2) Where an appeal is taken against such an interlocutor, the interlocutor continues in effect pending disposal of the appeal.

**Commencement Information**

**I34** Sch. 5 para. 13 in force at 1.10.2009 by S.I. 2009/1493, art. 2(c)

- 14 (1) In Northern Ireland—
- (a) a person against whom a foreign travel restriction order is made may appeal against the making of the order;
  - (b) a person subject to a foreign travel restriction order may appeal against—
    - (i) an order under paragraph 10 varying or renewing the order, or
    - (ii) a refusal to make an order under that paragraph varying or discharging the order.
- (2) The appeal lies to the county court.
- (3) On an appeal under this paragraph the court may make—
- (a) such orders as it considers necessary to give effect to its determination of the appeal, and
  - (b) such incidental and consequential orders as appear to it to be just.

**Commencement Information**

**I35** Sch. 5 para. 14 in force at 1.10.2009 by S.I. 2009/1493, art. 2(c)

*Breach of foreign travel restriction order an offence*

- 15 (1) A person commits an offence who, without reasonable excuse—

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- (a) does anything they are prohibited from doing by a foreign travel restriction order, or
  - (b) fails to comply with a requirement imposed on them by such an order.
- (2) A person guilty of an offence under this paragraph is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine or both.
- (3) In the application of sub-paragraph (2)(a)—
- (a) in England and Wales, in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), or
  - (b) in Northern Ireland,
- for “12 months” substitute “ 6 months ”.
- (4) Where a person is convicted of an offence under this paragraph, it is not open to the court by or before which they are convicted—
- (a) in England and Wales or Northern Ireland, to make an order for conditional discharge in respect of the offence;
  - (b) in Scotland, to make a probation order in respect of the offence.

**Commencement Information**

**I36** Sch. 5 para. 15 in force at 1.10.2009 by S.I. 2009/1493, art. 2(c)

*Meaning of “terrorism activity”*

- 16 In this Schedule “terrorism activity” means anything that—
- (a) if done in any part of the United Kingdom, would constitute an offence to which this Part applies by virtue of section 41, or
  - (b) is, or takes place in the course of, an act of terrorism or is for the purposes of terrorism.

**Commencement Information**

**I37** Sch. 5 para. 16 in force at 1.10.2009 by S.I. 2009/1493, art. 2(c)

NOTIFICATION REQUIREMENTS: APPLICATION TO SERVICE OFFENCES

*Service offences to which this Part applies: terrorism offences*

- 1 This Part applies to a service offence as respects which the corresponding civil offence is an offence within section 41(1) or (2) (offences to which this Part applies: terrorism offences).

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#### Commencement Information

**I38** Sch. 6 para. 1 in force at 1.10.2009 by S.I. 2009/1493, art. 2(d)

*Service offences to which this Part applies: offences having a terrorist connection*

- 2
- (1) This Part applies to a service offence as to which the service court dealing with the offence has determined in accordance with section 32 that the offence has a terrorist connection.
  - (2) A person to whom the notification requirements apply by virtue of such a determination may appeal against it to the same court, and subject to the same conditions, as an appeal against sentence.
  - (3) If the determination is set aside on appeal, the notification requirements are treated as never having applied to that person in respect of the offence.

#### Commencement Information

**I39** Sch. 6 para. 2 in force at 1.10.2009 by S.I. 2009/1493, art. 2(d)

*Service offences dealt with before commencement*

- 3
- (1) This Part applies to a person dealt with for a service offence before the commencement of this Part only if—
    - (a) the corresponding civil offence is on the commencement of this Part within section 41(1) or (2) (offences to which this Part applies: terrorism offences), and
    - (b) immediately before the commencement of this Part the person—
      - (i) is imprisoned or detained in pursuance of the sentence or other order made in respect of the offence,
      - (ii) would be so imprisoned or detained but for being unlawfully at large, absent without leave, on temporary leave or leave of absence, or released from custody (or on bail) pending an appeal, or
      - (iii) is on licence having served the custodial part of a sentence of imprisonment in respect of the offence.
  - (2) In relation to a person dealt with for a service offence before the commencement of this Part, any reference in this Schedule to a sentence, order or finding under a specified statutory provision includes a sentence or order under any corresponding earlier statutory provision.

#### Commencement Information

**I40** Sch. 6 para. 3 in force at 1.10.2009 by S.I. 2009/1493, art. 2(d)

*Service offences: persons to whom notification requirements apply*

- 4
- The notification requirements apply to a person who—

*Status: Point in time view as at 01/10/2009.*

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- (a) is aged 16 or over at the time of being dealt with for a service offence to which this Part applies, and
- (b) is made subject in respect of the offence to a sentence or order within paragraph 5 (sentences or orders triggering notification requirements).

#### Commencement Information

**I41** Sch. 6 para. 4 in force at 1.10.2009 by S.I. 2009/1493, art. 2(d)

*Service offences: sentences or orders triggering notification requirements*

- 5 (1) The notification requirements apply to a person who—
- (a) has been convicted of a service offence to which this Part applies and sentenced in respect of the offence to—
    - (i) imprisonment or custody for life,
    - (ii) imprisonment or custodial order for a term of 12 months or more,
    - (iii) imprisonment or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 (c. 44),
    - (iv) detention for life or for a period of 12 months or more under section 71A(4) of the Army Act 1955 or the Air Force Act 1955, section 43A(4) of the Naval Discipline Act 1957 or section 209 of the Armed Forces Act 2006 (c. 52),
    - (v) detention and training (and supervision) under section 211 of that Act, where the term of the order under that section is 12 months or more,
    - (vi) detention for public protection under section 226 of the Criminal Justice Act 2003, or
    - (vii) detention during Her Majesty's pleasure; or
  - (b) has been—
    - (i) convicted of a service offence to which this Part applies carrying a maximum term of imprisonment of 12 months or more,
    - (ii) found not guilty by reason of insanity of such an offence, or
    - (iii) found to be unfit to stand trial and to have done the act charged against them in respect of such an offence,
 and made subject in respect of the offence to a hospital order.
- (2) The reference in sub-paragraph (1)(b)(i) to an offence carrying a maximum term of imprisonment of 12 months or more—
- (a) is to an offence carrying such a maximum term in the case of a person who has attained the age of 18 (or 21, as respects any time before the coming into force of section 61 of the Criminal Justice and Court Services Act 2000 (c. 43)), and
  - (b) includes an offence carrying in the case of such a person a maximum term of life imprisonment and an offence for which in the case of such a person the sentence is fixed by law as life imprisonment.

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**Modifications etc. (not altering text)**

- C1** Sch. 6 para. 5(1)(a)(ii) modified (24.4.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [The Armed Forces Act 2006 \(Transitional Provisions etc\) Order 2009 \(S.I. 2009/1059\)](#), art. 1(3), [Sch. 2 para. 17\(a\)](#)

**Commencement Information**

- I42** Sch. 6 para. 5 in force at 1.10.2009 by [S.I. 2009/1493](#), [art. 2\(d\)](#)

*Service offences: power to amend specified terms or periods of imprisonment or detention*

- 6 (1) The Secretary of State may by order amend the provisions of paragraph 5 referring to a specified term or period of imprisonment or detention.
- (2) An order reducing a specified term or period has effect only in relation to persons dealt with after the order comes into force.
- (3) Where an order increases a specified term or period—
- (a) it has effect in relation to persons dealt with at any time, whether before or after the order comes into force, and
  - (b) a person who would not have been subject to the notification requirements if the order had been in force when the offence was dealt with (and who is not otherwise subject to those requirements) ceases to be subject to the requirements when the order comes into force.
- (4) An order under this paragraph is subject to affirmative resolution procedure.

**Commencement Information**

- I43** Sch. 6 para. 6 in force at 1.10.2009 by [S.I. 2009/1493](#), [art. 2\(d\)](#)

*Service offences: period for which notification requirements apply*

- 7 (1) The period for which the notification requirements apply is—
- (a) 30 years in the case of a person who—
    - (i) is aged 18 or over at the time of conviction for the service offence, and
    - (ii) receives in respect of the offence a sentence within subparagraph (2);
  - (b) 15 years in the case of a person who—
    - (i) is aged 18 or over at the time of conviction for the service offence, and
    - (ii) receives in respect of the offence a sentence within subparagraph (3);
  - (c) 10 years in any other case.
- (2) The sentences where a 30 year period applies are—
- (a) imprisonment or custody for life,
  - (b) imprisonment or a custodial order for a term of 10 years or more,

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- (c) imprisonment or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 (c. 44),
  - (d) detention during Her Majesty's pleasure.
- (3) The sentences where a 15 year period applies are imprisonment or a custodial order for a term of 5 years or more but less than 10 years.
- (4) The period begins with the day on which the person is dealt with for the offence.
- (5) If a person who is the subject of a finding within paragraph 5(1)(b)(iii) (finding of unfitness to stand trial etc) is subsequently tried for the offence, the period resulting from that finding ends—
- (a) if the person is acquitted, at the conclusion of the trial;
  - (b) if the person is convicted, when the person is again dealt with in respect of the offence.
- (6) For the purposes of determining the length of the period—
- (a) a person who has been sentenced in respect of two or more terrorism offences to consecutive terms of imprisonment is treated as if sentenced, in respect of each of the offences, to a term of imprisonment equal to the aggregate of the terms; and
  - (b) a person who has been sentenced in respect of two or more such offences to concurrent terms of imprisonment (X and Y) that overlap for a period (Z) is treated as if sentenced, in respect of each of the offences, to a term of imprisonment equal to X plus Y minus Z.
- (7) In determining whether the period has expired, there shall be disregarded any period when the person was—
- (a) remanded in or committed to custody by an order of a court,
  - (b) in service custody pursuant to a decision of a court or judge advocate (or an order of a commanding officer under section 110 of the Armed Forces Act 2006 (c. 52)),
  - (c) serving a sentence of imprisonment or detention,
  - (d) detained in a hospital, or
  - (e) detained under the Immigration Acts.
- (8) In sub-paragraph (7)(b)—
- (a) “service custody” includes, in relation to times before the commencement of the relevant provisions of the Armed Forces Act 2006, military custody, air-force custody and naval custody;
  - (b) “judge advocate” includes, in relation to such times, judicial officer;
  - (c) the reference to section 110 of the Armed Forces Act 2006 includes, in relation to times before the commencement of that section, a reference to—
    - (i) section 75K of the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19);
    - (ii) section 47L of the Naval Discipline Act 1957 (c. 53).

**Modifications etc. (not altering text)**

**C2** Sch. 6 para. 7(2)(b)(3) modified (24.4.2009 for specified purposes) by [The Armed Forces Act 2006 \(Transitional Provisions etc\) Order 2009 \(S.I. 2009/1059\)](#), art. 1(3), [Sch. 2 para. 17\(b\)](#)

*Status: Point in time view as at 01/10/2009.*

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**C3** Sch. 6 para. 7(3) modified (24.4.2009 for specified purposes) by [The Armed Forces Act 2006 \(Transitional Provisions etc\) Order 2009 \(S.I. 2009/1059\)](#), art. 1(3), [Sch. 2 para. 17\(b\)](#)

**Commencement Information**

**I44** Sch. 6 para. 7 in force at 1.10.2009 by [S.I. 2009/1493](#), [art. 2\(d\)](#)

*Modifications in relation to service offences etc*

- 8 (1) In the following provisions, references to a person committed to custody by an order of a court include a person in service custody pursuant to a decision of a court or judge advocate (or an order of a commanding officer under section 110 of the Armed Forces Act 2006)—
- (a) section 47(4) (initial notification);
  - (b) section 48(8) (notification of changes);
  - (c) section 49(2) (periodic re-notification);
  - (d) section 53(7) (period for which requirements apply);
  - (e) section 56(3) (notification on return after absence from UK).
- (2) In section 48(4) (notification on release from custody etc) the reference to custody pursuant to an order of a court includes service custody pursuant to a decision of a court or judge advocate (or an order of a commanding officer under section 110 of the Armed Forces Act 2006).
- (3) Paragraph 7(8) (meaning of “service custody” and “judge advocate” etc) applies for the purposes of this paragraph.

**Commencement Information**

**I45** Sch. 6 para. 8 in force at 1.10.2009 by [S.I. 2009/1493](#), [art. 2\(d\)](#)

- 9 In the application of section 47(6) (initial notification: person dealt with before commencement) in relation to a service offence, the reference to a person being on bail pending an appeal includes a person released from custody pending an appeal.

**Commencement Information**

**I46** Sch. 6 para. 9 in force at 1.10.2009 by [S.I. 2009/1493](#), [art. 2\(d\)](#)

- 10 Where in relation to a service offence the court of trial (as defined by subsection (2) of section 51 (meaning of “local police area”)) was situated outside the United Kingdom, that section has effect as if subsection (1)(c) were omitted.

**Commencement Information**

**I47** Sch. 6 para. 10 in force at 1.10.2009 by [S.I. 2009/1493](#), [art. 2\(d\)](#)

- 11 References in this Part to a sentence of detention do not include—
- (a) a sentence of service detention (as defined by section 374 of the Armed Forces Act 2006 (c. 52)), or

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- (b) a corresponding sentence passed under (or by virtue of) the Army Act 1955 (3 & 4 Eliz. 2 c. 18), the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or the Naval Discipline Act 1957 (c. 53).

**Commencement Information**

**I48** Sch. 6 para. 11 in force at 1.10.2009 by S.I. 2009/1493, art. 2(d)

- 12 The following provisions do not apply in relation to service offences—
- (a) section 43 (offences dealt with before commencement);
  - (b) section 45 (sentences or orders triggering notification requirements);
  - (c) section 53 (period for which requirements apply).

**Commencement Information**

**I49** Sch. 6 para. 12 in force at 1.10.2009 by S.I. 2009/1493, art. 2(d)

*Application of power to make transitional modifications etc*

- 13 An order under subsection (4) of section 380 of the Armed Forces Act 2006 (power to make transitional modifications etc) which makes provision of the kind mentioned in subsection (6) of that section may provide for paragraph 5(1)(a) or paragraph 7(2) or (3) above to have effect with such modifications (relating to custodial punishments specified in the order) as are so specified.

**Commencement Information**

**I50** Sch. 6 para. 13 in force at 1.10.2009 by S.I. 2009/1493, art. 2(d)

SCHEDULE 7 **U.K.**

Section 62

TERRORIST FINANCING AND MONEY LAUNDERING

**PART 1 U.K.**

CONDITIONS FOR GIVING A DIRECTION

*Conditions for giving a direction*

- 1 (1) The Treasury may give a direction under this Schedule if one or more of the following conditions is met in relation to a country.
- (2) The first condition is that the Financial Action Task Force has advised that measures should be taken in relation to the country because of the risk of terrorist financing or money laundering activities being carried on—
- (a) in the country,
  - (b) by the government of the country, or



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- (c) by persons resident or incorporated in the country.
- (3) The second condition is that the Treasury reasonably believe that there is a risk that terrorist financing or money laundering activities are being carried on—
  - (a) in the country,
  - (b) by the government of the country, or
  - (c) by persons resident or incorporated in the country,and that this poses a significant risk to the national interests of the United Kingdom.
- (4) The third condition is that the Treasury reasonably believe that—
  - (a) the development or production of nuclear, radiological, biological or chemical weapons in the country, or
  - (b) the doing in the country of anything that facilitates the development or production of any such weapons,poses a significant risk to the national interests of the United Kingdom.
- (5) The power to give a direction is not exercisable in relation to an EEA state.

#### *Main definitions*

- 2 (1) “Terrorist financing” means—
  - (a) the use of funds, or the making available of funds, for the purposes of terrorism, or
  - (b) the acquisition, possession, concealment, conversion or transfer of funds that are (directly or indirectly) to be used or made available for those purposes.
- (2) “Money laundering” means an act which falls within section 340(11) of the Proceeds of Crime Act 2002 (c. 29).
- (3) “Nuclear weapon” includes a nuclear explosive device that is not intended for use as a weapon.
- (4) “Radiological weapon” means a device designed to cause destruction, damage or injury by means of the radiation produced by the decay of radioactive material.
- (5) “Chemical weapon” means a chemical weapon as defined by section 1(1) of the Chemical Weapons Act 1996 (c. 6), other than one whose intended use is only for permitted purposes (as defined by section 1(3) of that Act).
- (6) “Biological weapon” means anything within section 1(1)(a) or (b) of the Biological Weapons Act 1974 (c. 6).

## **PART 2** **U.K.**

### PERSONS TO WHOM A DIRECTION MAY BE GIVEN

#### *Persons to whom a direction may be given*

- 3 (1) A direction under this Schedule may be given to—
  - (a) a particular person operating in the financial sector,
  - (b) any description of persons operating in that sector, or
  - (c) all persons operating in that sector.

*Status: Point in time view as at 01/10/2009.*

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- (2) In this Schedule “relevant person”, in relation to a direction, means any of the persons to whom the direction is given.
- (3) A direction may make different provision in relation to different descriptions of relevant person.

*Persons operating in the financial sector*

- 4 (1) Any reference in this Schedule to a person operating in the financial sector is to a credit or financial institution that—
- (a) is a United Kingdom person, or
  - (b) is acting in the course of a business carried on by it in the United Kingdom.
- (2) This is subject to the exceptions in paragraph 6.

*Meaning of “credit institution” and “financial institution”*

- 5 (1) “Credit institution” means—
- (a) a credit institution as defined in Article 4(1)(a) of the banking consolidation directive, or
  - (b) a branch (within the meaning of Article 4(3) of that directive) located in an EEA state of—
    - (i) an institution within sub-paragraph (a), or
    - (ii) an equivalent institution whose head office is located in a non-EEA state,
 when it accepts deposits or other repayable funds from the public or grants credits for its own account (within the meaning of the banking consolidation directive).
- (2) “Financial institution” means—
- (a) an undertaking, including a money service business, when it carries out one or more of the activities listed in points 2 to 12 and 14 of Annex 1 to the banking consolidation directive, other than—
    - (i) a credit institution;
    - (ii) an undertaking whose only listed activity is trading for own account in one or more of the products listed in point 7 of Annex 1 to the banking consolidation directive where the undertaking does not have a customer,
 and for this purpose “customer” means a person who is not a member of the same group as the undertaking;
  - (b) an insurance company duly authorised in accordance with the life assurance consolidation directive, when it carries out activities covered by that directive;
  - (c) a person whose regular occupation or business is the provision to other persons of an investment service or the performance of an investment activity on a professional basis, when providing or performing investment services or activities (within the meaning of the markets in financial instruments directive), other than a person falling within Article 2 of that directive;
  - (d) a collective investment undertaking, when marketing or otherwise offering its units or shares;

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- (e) an insurance intermediary as defined in Article 2(5) of Directive [2002/92/EC](#) of the European Parliament and of the Council of 9th December 2002 on insurance mediation (other than a tied insurance intermediary as mentioned in Article 2(7) of that Directive), when it acts in respect of contracts of long-term insurance within the meaning given by article 3(1) of, and Part II of Schedule 1 to, the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544);
- (f) a branch located in an EEA state of—
  - (i) a person referred to in any of paragraphs (a) to (e), or
  - (ii) a person equivalent to a person within any of those paragraphs whose head office is located in a non-EEA state,when carrying out any activity mentioned in that paragraph;
- (g) an insurance company (as defined by section 1165(3) of the Companies Act 2006 (c. 46));
- (h) the National Savings Bank;
- (i) the Director of Savings, when money is raised under the auspices of the Director under the National Loans Act 1968 (c. 13).

#### *Exceptions*

- 6 (1) For the purposes of this Schedule the following are not regarded as persons operating in the financial sector when carrying out any of the following activities—
- (a) a society registered under the Industrial and Provident Societies Act 1965 (c. 12), when it—
    - (i) issues withdrawable share capital within the limit set by section 6 of that Act (maximum shareholding in society); or
    - (ii) accepts deposits from the public within the limit set by section 7(3) of that Act (carrying on of banking by societies);
  - (b) a society registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.)), when it—
    - (i) issues withdrawable share capital within the limit set by section 6 of that Act (maximum shareholding in society); or
    - (ii) accepts deposits from the public within the limit set by section 7(3) of that Act (carrying on of banking by societies);
  - (c) a person within any of paragraphs 1 to 23 or 25 to 51 of the Schedule to the Financial Services and Markets Act 2000 (Exemption) Order 2001 (S.I. 2001/1201), when carrying out an activity in respect of which the person is exempt;
  - (d) a person who was an exempted person for the purposes of section 45 of the Financial Services Act 1986 (c. 60) (miscellaneous exemptions) immediately before its repeal, when exercising the functions specified in that section.
- (2) A person who falls within the definition of “credit institution” or “financial institution” solely as a result of engaging in financial activity on an occasional or very limited basis is not regarded for the purposes of this Schedule as operating in the financial sector.
- (3) For the purposes of sub-paragraph (2) a person is regarded as engaging in a financial activity on an occasional or very limited basis if—

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- (a) the person's total annual turnover in respect of the financial activity does not exceed £64,000,
- (b) the financial activity is limited in relation to any customer to no more than one transaction exceeding 1,000 euro (whether the transaction is carried out in a single operation or a series of operations which appear to be linked),
- (c) the financial activity does not exceed 5% of the person's total annual turnover,
- (d) the financial activity is ancillary and directly related to the person's main activity,
- (e) the financial activity is not the transmission or remittance of money (or any representation of monetary value) by any means,
- (f) the person's main activity is not that of a credit or financial institution, and
- (g) the financial activity is provided only to customers of the person's main activity.

#### *Interpretation of this Part*

- 7 In this Part of this Schedule—
- “the banking consolidation directive” means Directive [2006/48/EC](#) of the European Parliament and of the Council of 14th June 2006 relating to the taking up and pursuit of the business of credit institutions;
  - “the life assurance consolidation directive” means Directive [2002/83/EC](#) of the European Parliament and of the Council of 5th November 2002 concerning life assurance;
  - “the markets in financial instruments directive” means Directive [2004/39/EC](#) of the European Parliament and of the Council of 12th April 2004 on markets in financial instruments.

#### *Power to amend*

- 8 (1) The Treasury may by order amend paragraphs 4 to 7.
- (2) Any such order is subject to affirmative resolution procedure.

### **PART 3** **U.K.**

#### REQUIREMENTS THAT MAY BE IMPOSED BY A DIRECTION

#### *Requirements that may be imposed by a direction*

- 9 (1) A direction under this Schedule may impose requirements in relation to transactions or business relationships with—
- (a) a person carrying on business in the country;
  - (b) the government of the country;
  - (c) a person resident or incorporated in the country.
- (2) The direction may impose requirements in relation to—
- (a) a particular person within sub-paragraph (1),
  - (b) any description of persons within that sub-paragraph, or
  - (c) all persons within that sub-paragraph.

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- (3) In this Schedule “designated person”, in relation to a direction, means any of the persons in relation to whom the direction is given.
- (4) The kinds of requirement that may be imposed by a direction under this Schedule are specified in—
  - paragraph 10 (customer due diligence);
  - paragraph 11 (ongoing monitoring);
  - paragraph 12 (systematic reporting);
  - paragraph 13 (limiting or ceasing business).
- (5) A direction may make different provision—
  - (a) in relation to different descriptions of designated person, and
  - (b) in relation to different descriptions of transaction or business relationship.
- (6) The requirements imposed by a direction must be proportionate having regard to the advice mentioned in paragraph 1(2) or, as the case may be, the risk mentioned in paragraph 1(3) or (4) to the national interests of the United Kingdom.

#### *Customer due diligence*

- 10 (1) A direction may require a relevant person to undertake enhanced customer due diligence measures—
  - (a) before entering into a transaction or business relationship with a designated person, and
  - (b) during a business relationship with such a person.
- (2) The direction may do either or both of the following—
  - (a) impose a general obligation to undertake enhanced customer due diligence measures;
  - (b) require a relevant person to undertake specific measures identified or described in the direction.
- (3) “Customer due diligence measures” means measures to—
  - (a) establish the identity of the designated person,
  - (b) obtain information about—
    - (i) the designated person and their business, and
    - (ii) the source of their funds, and
  - (c) assess the risk of the designated person being involved in relevant activities.
- (4) In sub-paragraph (3)(c) “relevant activities” means—
  - (a) terrorist financing;
  - (b) money laundering; or
  - (c) the development or production of nuclear, radiological, biological or chemical weapons or the facilitation of that development or production.
- (5) A direction may not impose requirements of a kind mentioned in this paragraph on a person who is regarded as operating in the financial sector by virtue only of paragraph 5(2)(g) (certain insurance companies).

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### *Ongoing monitoring*

- 11 (1) A direction may require a relevant person to undertake enhanced ongoing monitoring of any business relationship with a designated person.
- (2) The direction may do either or both of the following—
- (a) impose a general obligation to undertake enhanced ongoing monitoring;
  - (b) require a relevant person to undertake specific measures identified or described in the direction.
- (3) “Ongoing monitoring” of a business relationship means—
- (a) keeping up to date information and documents obtained for the purposes of customer due diligence measures, and
  - (b) scrutinising transactions undertaken during the course of the relationship (and, where appropriate, the source of funds for those transactions) to ascertain whether the transactions are consistent with the relevant person's knowledge of the designated person and their business.
- (4) A direction may not impose requirements of a kind mentioned in this paragraph on a person who is regarded as operating in the financial sector by virtue only of paragraph 5(2)(g) (certain insurance companies).

### *Systematic reporting*

- 12 (1) A direction may require a relevant person to provide such information and documents as may be specified in the direction relating to transactions and business relationships with designated persons.
- (2) A direction imposing such a requirement must specify how the direction is to be complied with, including—
- (a) the person to whom the information and documents are to be provided, and
  - (b) the period within which, or intervals at which, information and documents are to be provided.
- (3) The power conferred by this paragraph is not exercisable in relation to information or documents in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.
- (4) The exercise of the power conferred by this paragraph and the provision of information under it is not otherwise subject to any restriction on the disclosure of information, whether imposed by statute or otherwise.

### *Limiting or ceasing business*

- 13 A direction may require a relevant person not to enter into or continue to participate in—
- (a) a specified transaction or business relationship with a designated person,
  - (b) a specified description of transactions or business relationships with a designated person, or
  - (c) any transaction or business relationship with a designated person.

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## PART 4 U.K.

### PROCEDURAL PROVISIONS AND LICENSING

#### *General directions to be given by order*

- 14 (1) A direction given to—
- (a) a description of persons operating in the financial sector, or
  - (b) all persons operating in that sector,
- must be contained in an order made by the Treasury.
- (2) If the order contains requirements of a kind mentioned in paragraph 13 (limiting or ceasing business)—
- (a) it must be laid before Parliament after being made, and
  - (b) if not approved by a resolution of each House of Parliament before the end of 28 days beginning with the day on which it is made, it ceases to have effect at the end of that period.

In calculating the period of 28 days, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

- (3) An order's ceasing to have effect in accordance with sub-paragraph (2) does not affect anything done under the order.
- (4) An order to which sub-paragraph (2) does not apply is subject to negative resolution procedure.
- (5) If apart from this sub-paragraph an order under this paragraph would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument.

#### *Specific directions: notification and duration of directions*

- 15 (1) This paragraph applies in relation to a direction given to a particular person.
- (2) The Treasury must give notice of the direction to the person.
- (3) The direction (if not previously revoked and whether or not varied) ceases to have effect at the end of the period of one year beginning with the day on which the direction is given.
- This is without prejudice to the giving of a further direction.
- (4) The Treasury may vary or revoke the direction at any time.
- (5) Where the direction is varied or ceases to have effect (whether on revocation or otherwise), the Treasury must give notice of that fact to the person.

#### *General directions: publication and duration of directions*

- 16 (1) This paragraph applies to an order containing directions under paragraph 14 (general directions given by order).
- (2) The Treasury must take such steps as they consider appropriate to publicise the making of the order.

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- (3) An order—
- (a) revoking the order, or
  - (b) varying the order so as to make its provisions less onerous,
- is subject to negative resolution procedure.
- (4) The order (if not previously revoked and whether or not varied) ceases to have effect at the end of the period of one year beginning with the day on which it was made.
- This is without prejudice to the making of a further order.
- (5) Where the order is varied or ceases to have effect (whether on revocation or otherwise), the Treasury must take such steps as they consider appropriate to publicise that fact.

*Directions limiting or ceasing business: exemption by licence*

- 17 (1) The following provisions apply where a direction contains requirements of a kind mentioned in paragraph 13 (limiting or ceasing business).
- (2) The Treasury may grant a licence to exempt acts specified in the licence from those requirements.
- (3) A licence may be—
- (a) general or granted to a description of persons or to a particular person;
  - (b) subject to conditions;
  - (c) of indefinite duration or subject to an expiry date.
- (4) The Treasury may vary or revoke a licence at any time.
- (5) On the grant, variation or revocation of a licence, the Treasury must—
- (a) in the case of a licence granted to a particular person, give notice of the grant, variation or revocation to that person;
  - (b) in the case of a general licence or a licence granted to a description of persons, take such steps as the Treasury consider appropriate to publicise the grant, variation or revocation of the licence.

**PART 5 U.K.**

ENFORCEMENT: INFORMATION POWERS

*Enforcement authorities and officers*

- 18 (1) In this Schedule “enforcement authority” means—
- (a) the Financial Services Authority (“the FSA”),
  - (b) the Commissioners for Her Majesty's Revenue and Customs (“HMRC”),
  - (c) the Office of Fair Trading (“the OFT”), or
  - (d) in relation to credit unions in Northern Ireland, the Department of Enterprise, Trade and Investment in Northern Ireland (“DETINI”).
- (2) In this Part of this Schedule “enforcement officer” means—
- (a) an officer of the FSA, including a member of the staff or an agent of the FSA,



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- (b) an officer of Revenue and Customs,
  - (c) an officer of the OFT,
  - (d) an officer of DETINI acting for the purposes of its functions under this Schedule in relation to credit unions in Northern Ireland, or
  - (e) a local enforcement officer.
- (3) A “local enforcement officer” means—
- (a) in Great Britain, an officer of a local weights and measures authority;
  - (b) in Northern Ireland, an officer of DETINI acting pursuant to arrangements made with the OFT for the purposes of this Schedule.

*Power to require information or documents*

- 19 (1) An enforcement officer may by notice to a relevant person require the person—
- (a) to provide such information as may be specified in the notice, or
  - (b) to produce such documents as may be so specified.
- (2) An officer may exercise powers under this paragraph only if the information or documents sought to be obtained as a result are reasonably required in connection with the exercise by the enforcement authority for whom the officer acts of its functions under this Schedule.
- (3) Where an officer requires information to be provided or documents produced under this paragraph—
- (a) the notice must set out the reasons why the officer requires the information to be provided or the documents produced, and
  - (b) the information must be provided or the documents produced—
    - (i) before the end of such reasonable period as may be specified in the notice; and
    - (ii) at such place as may be so specified.
- (4) In relation to a document in electronic form the power to require production of it includes a power to require the production of a copy of it in legible form or in a form from which it can readily be produced in visible and legible form.
- (5) An enforcement officer may take copies of, or make extracts from, any document produced under this paragraph.
- (6) The production of a document does not affect any lien which a person has on the document.

*Entry, inspection without a warrant etc*

- 20 (1) Where an enforcement officer has reasonable cause to believe that any premises are being used by a relevant person in connection with the person's business activities, the officer may on producing evidence of authority at any reasonable time—
- (a) enter the premises;
  - (b) inspect the premises;
  - (c) observe the carrying on of business activities by the relevant person;
  - (d) inspect any document found on the premises;
  - (e) require any person on the premises to provide an explanation of any document or to state where it may be found.

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- (2) An enforcement officer may take copies of, or make extracts from, any document found under sub-paragraph (1).
- (3) An officer may exercise powers under this paragraph only if the information or document sought to be obtained as a result is reasonably required in connection with the exercise by the enforcement authority for whom the officer acts of its functions under this Schedule.
- (4) In this paragraph “premises” means any premises other than premises used only as a dwelling.

*Entry to premises under warrant*

- 21 (1) A justice may issue a warrant under this paragraph if satisfied on information on oath given by an enforcement officer that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.
- (2) The first set of conditions is—
  - (a) that there is on the premises specified in the warrant a document in relation to which a requirement could be imposed under paragraph 19(1)(b), and
  - (b) that if such a requirement were to be imposed—
    - (i) it would not be complied with, or
    - (ii) the document to which it relates would be removed, tampered with or destroyed.
- (3) The second set of conditions is—
  - (a) that a person on whom a requirement has been imposed under paragraph 19(1)(b) has failed (wholly or in part) to comply with it, and
  - (b) that there is on the premises specified in the warrant a document that has been required to be produced.
- (4) The third set of conditions is—
  - (a) that an enforcement officer has been obstructed in the exercise of a power under paragraph 20, and
  - (b) that there is on the premises specified in the warrant a document that could be inspected under paragraph 20(1)(d).
- (5) A justice may issue a warrant under this paragraph if satisfied on information on oath given by an officer that there are reasonable grounds for suspecting that—
  - (a) an offence under this Schedule has been, is being or is about to be committed by a relevant person, and
  - (b) there is on the premises specified in the warrant a document relevant to whether that offence has been, or is being or is about to be committed.
- (6) A warrant issued under this paragraph shall authorise an enforcement officer—
  - (a) to enter the premises specified in the warrant;
  - (b) to search the premises and take possession of anything appearing to be a document specified in the warrant or to take, in relation to any such document, any other steps which may appear to be necessary for preserving it or preventing interference with it;
  - (c) to take copies of, or extracts from, any document specified in the warrant;

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- (d) to require any person on the premises to provide an explanation of any document appearing to be of the kind specified in the warrant or to state where it may be found;
  - (e) to use such force as may reasonably be necessary.
- (7) Where a warrant is issued by a justice under sub-paragraph (1) or (5) on the basis of information on oath given by an officer of the FSA, for “an enforcement officer” in sub-paragraph (6) substitute “a constable”.
- (8) In sub-paragraphs (1), (5) and (7), “justice” means—
- (a) in relation to England and Wales, a justice of the peace;
  - (b) in relation to Scotland, a justice within the meaning of section 307 of the Criminal Procedure (Scotland) Act 1995 (c. 46) (interpretation);
  - (c) in relation to Northern Ireland, a lay magistrate.
- (9) In the application of this paragraph to Scotland, the references in sub-paragraphs (1), (5) and (7) to information on oath are to be read as references to evidence on oath.

#### *Restrictions on powers*

- 22 (1) This paragraph applies in relation to the powers conferred by—
- (a) paragraph 19 (power to require information or documents),
  - (b) paragraph 20 (entry, inspection without warrant etc), or
  - (c) paragraph 21 (entry to premises under warrant).
- (2) Those powers are not exercisable in relation to information or documents in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.
- (3) The exercise of those powers and the provision of information or production of documents under them is not otherwise subject to any restriction on the disclosure of information, whether imposed by statute or otherwise.

#### *Failure to comply with information requirement*

- 23 (1) If on an application made by—
- (a) an enforcement authority, or
  - (b) a local weights and measures authority or DETINI pursuant to arrangements made with the OFT—
    - (i) by or on behalf of the authority; or
    - (ii) by DETINI,
- it appears to the court that a person (the “information defaulter”) has failed to do something that they were required to do under paragraph 19(1), the court may make an order under this paragraph.
- (2) An order under this paragraph may require the information defaulter—
- (a) to do the thing that they failed to do within such period as may be specified in the order;
  - (b) otherwise to take such steps to remedy the consequences of the failure as may be so specified.
- (3) If the information defaulter is a body corporate, a partnership or an unincorporated body of persons that is not a partnership, the order may require any officer of the

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body corporate, partnership or body, who is (wholly or partly) responsible for the failure to meet such costs of the application as are specified in the order.

- (4) In this paragraph “the court” means—
- (a) in England and Wales and Northern Ireland, the High Court or the county court;
  - (b) in Scotland, the Court of Session or the sheriff court.

*Powers of local enforcement officers*

- 24 (1) A local enforcement officer may only exercise powers under this Part of this Schedule pursuant to arrangements made with the OFT—
- (a) by or on behalf of the relevant local weights and measures authority, or
  - (b) by DETINI.
- (2) Anything done or omitted to be done by, or in relation to, a local enforcement officer in the exercise or purported exercise of a power in this Part of this Schedule is treated for all purposes as if done or omitted to be done by, or in relation to, an officer of the OFT.
- (3) Sub-paragraph (2) does not apply for the purposes of criminal proceedings brought against the local enforcement officer, the relevant local weights and measures authority, DETINI or the OFT, in respect of anything done or omitted to be done by the officer.
- (4) A local enforcement officer must not disclose to any person other than the OFT and the relevant local weights and measures authority or, as the case may be, DETINI information obtained by the officer in the exercise of powers under this Part of this Schedule unless—
- (a) the officer has the approval of the OFT to do so, or
  - (b) the officer is under a duty to make the disclosure.
- (5) In this paragraph “the relevant local weights and measures authority”, in relation to a local enforcement officer, means the authority of which the officer is an officer.

**PART 6 U.K.**

ENFORCEMENT: CIVIL PENALTIES

*Power to impose civil penalties*

- 25 (1) An enforcement authority may impose a penalty of such amount as it considers appropriate on a person who fails to comply with a requirement imposed—
- (a) by a direction under this Schedule, or
  - (b) by a condition of a licence under paragraph 17.

For this purpose “appropriate” means effective, proportionate and dissuasive.

- (2) No such penalty is to be imposed if the authority is satisfied that the person took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

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- (3) In deciding whether to impose a penalty for failure to comply with a requirement, an enforcement authority must consider whether the person followed any relevant guidance which was at the time—
  - (a) issued by a supervisory authority or any other appropriate body,
  - (b) approved by the Treasury, and
  - (c) published in a manner approved by the Treasury as suitable in their opinion to bring the guidance to the attention of persons likely to be affected by it.
- (4) In sub-paragraph (3) “appropriate body” means a body which regulates or is representative of any trade, profession, business or employment carried on by the person.
- (5) A person on whom a penalty is imposed under this paragraph is not liable to be proceeded against for an offence under paragraph 30 in respect of the same failure.

*Imposition of penalty by HMRC: procedure*<sup>F1</sup>...

**Textual Amendments**

- F1** Words in Sch. 7 Pt. 6 cross-heading omitted (1.4.2009) by virtue of [Revenue and Customs Appeals Order 2009 \(S.I. 2009/777\)](#), art. 1, [Sch. para. 2\(2\)](#)

- 26 (1) This paragraph applies where HMRC decide to impose a penalty under paragraph 25 on a person.
- (2) HMRC must give the person notice of—
  - (a) their decision to impose the penalty and its amount,
  - (b) the reasons for imposing the penalty,
  - (c) the right to a review under [<sup>F2</sup>paragraph 26A], and
  - (d) the right to appeal under [<sup>F3</sup>this paragraph].
- [<sup>F4</sup>(3) The person may appeal to the tribunal against the decision in accordance with paragraph 26F.
- (4) On the appeal the tribunal may—
  - (a) set aside the decision appealed against, and
  - (b) impose any penalty that could have been imposed by HMRC or remit the matter to HMRC.
- (5) In this paragraph, and in paragraphs 26A to 26F, “tribunal” means the First-tier Tribunal or, where so provided by or determined under Tribunal Procedure Rules, the Upper Tribunal.
- (6) Section 85 of the Value Added Tax Act 1994 (settling appeals by agreement) shall apply to appeals under this paragraph as if the reference to section 83 of that Act included a reference to this paragraph.]

**Textual Amendments**

- F2** Words in Sch. 7 para. 26(2)(c) substituted (1.4.2009) by [Revenue and Customs Appeals Order 2009 \(S.I. 2009/777\)](#), art. 1, [Sch. para. 2\(3\)\(a\)](#)

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- F3** Words in Sch. 7 para. 26(2)(d) substituted (1.4.2009) by [Revenue and Customs Appeals Order 2009 \(S.I. 2009/777\)](#), art. 1, **Sch. para. 2(3)(b)**
- F4** Sch. 7 para. 26(3)-(6) substituted (1.4.2009) by [Revenue and Customs Appeals Order 2009 \(S.I. 2009/777\)](#), art. 1, **Sch. para. 2(4)**

### *[<sup>F5</sup> Offer of review*

#### **Textual Amendments**

- F5** Sch. 7 paras. 26A-26F and cross-headings inserted (1.4.2009) by [Revenue and Customs Appeals Order 2009 \(S.I. 2009/777\)](#), art. 1, **Sch. para. 3**

- 26A (1) HMRC must offer a person (P) a review of a decision that has been notified to P if an appeal lies under paragraph 26 in respect of the decision.
- (2) The offer of the review must be made by notice given to P at the same time as the decision is notified to P.
- (3) This paragraph does not apply to the notification of the conclusions of a review.

### *Review by HMRC*

- 26B (1) HMRC must review a decision if—
- they have offered a review of the decision under paragraph 26A, and
  - P notifies HMRC accepting the offer within 30 days from the date of the document containing the notification of the offer.
- (2) But P may not notify acceptance of the offer if P has already appealed to the tribunal under paragraph 26F.
- (3) HMRC shall not review a decision if P has appealed to the tribunal under paragraph 26F in respect of the decision.

### *Extensions of time*

- 26C (1) If under paragraph 26A, HMRC have offered P a review of a decision, HMRC may within the relevant period notify P that the relevant period is extended.
- (2) If notice is given the relevant period is extended to the end of 30 days from—
- the date of the notice, or
  - any other date set out in the notice or a further notice.
- (3) In this paragraph “relevant period” means—
- the period of 30 days referred to in paragraph 26B(1)(b), or
  - if notice has been given under sub-paragraph (1) that period as extended (or as most recently extended) in accordance with sub-paragraph (2).

### *Review out of time*

- 26D (1) This paragraph applies if—
- HMRC have offered a review of a decision under paragraph 26A, and

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- (b) P does not accept the offer within the time allowed under paragraph 26B(1) or 26C(2).
- (2) HMRC must review the decision under paragraph 26B if—
  - (a) after the time allowed, P notifies HMRC in writing requesting a review out of time,
  - (b) HMRC are satisfied that P had a reasonable excuse for not accepting the offer or requiring review within the time allowed, and
  - (c) HMRC are satisfied that P made the request without unreasonable delay after the excuse had ceased to apply.
- (3) HMRC shall not review a decision if P has appealed to the tribunal under paragraph 26F in respect of the decision.

*Nature of review etc*

- 26E (1) This paragraph applies if HMRC are required to undertake a review under paragraph 26B or 26D.
- (2) The nature and extent of the review are to be such as appear appropriate to HMRC in the circumstances.
  - (3) For the purpose of sub-paragraph (2), HMRC must, in particular, have regard to steps taken before the beginning of the review—
    - (a) by HMRC in reaching the decision, and
    - (b) by any person in seeking to resolve disagreement about the decision.
  - (4) The review must take account of any representations made by P at a stage which gives HMRC a reasonable opportunity to consider them.
  - (5) The review may conclude that the decision is to be—
    - (a) upheld,
    - (b) varied, or
    - (c) cancelled.
  - (6) HMRC must give P notice of the conclusions of the review and their reasoning within—
    - (a) a period of 45 days beginning with the relevant date, or
    - (b) such other period as HMRC and P may agree.
  - (7) In sub-paragraph (6) “relevant date” means—
    - (a) the date HMRC received P’s notification accepting the offer of a review (in a case falling within paragraph 26A), or
    - (b) the date on which HMRC decided to undertake the review (in a case falling within paragraph 26D).
  - (8) Where HMRC are required to undertake a review but do not give notice of the conclusions within the time period specified in sub-paragraph (6), the review is to be treated as having concluded that the decision is upheld.
  - (9) If sub-paragraph (8) applies, HMRC must notify P of the conclusion which the review is treated as having reached.

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*Bringing of appeals against decisions of HMRC*

- 26F (1) An appeal under paragraph 26 is to be made to the tribunal before—
- (a) the end of the period of 30 days beginning with the date of the document notifying the decision to which the appeal relates, or
  - (b) if later, the end of the relevant period (within the meaning of paragraph 26C).
- (2) But that is subject to sub-paragraphs (3) to (5).
- (3) In a case where HMRC are required to undertake a review under paragraph 26B—
- (a) an appeal may not be made until the conclusion date, and
  - (b) any appeal is to be made within the period of 30 days beginning with the conclusion date.
- (4) In a case where HMRC are requested to undertake a review in accordance with paragraph 26D—
- (a) an appeal may not be made—
    - (i) unless HMRC have decided whether or not to undertake a review, and
    - (ii) if HMRC decide to undertake a review, until the conclusion date; and
  - (b) any appeal is to be made within the period of 30 days beginning with—
    - (i) the conclusion date (if HMRC decide to undertake a review), or
    - (ii) the date on which HMRC decide not to undertake a review.
- (5) In a case where paragraph 26E(8) applies, an appeal may be made at any time from the end of the period specified in paragraph 26E(6) to the date 30 days after the conclusion date.
- (6) An appeal may be made after the end of the period specified in sub-paragraph (1), (3)(b), (4)(b) or (5) if the tribunal gives permission to do so.
- (7) In this paragraph “conclusion date” means the date of the document notifying the conclusions of the review.]

*Imposition of penalty by other enforcement authority: procedure*

- 27 (1) This paragraph applies if the FSA, the OFT or DETINI (“the authority”) proposes to impose a penalty under paragraph 25 on a person.
- (2) The authority must give the person notice of—
- (a) the proposal to impose the penalty and the proposed amount,
  - (b) the reasons for imposing the penalty, and
  - (c) the right to make representations to the authority within a specified period (which may not be less than 28 days).
- (3) The authority must then decide, within a reasonable period, whether to impose a penalty under paragraph 25 and must give the person notice—
- (a) if it decides not to impose a penalty, of that decision;
  - (b) if it decides to impose a penalty, of the following matters—
    - (i) the decision to impose a penalty and the amount,
    - (ii) the reasons for the decision, and
    - (iii) the right to appeal under paragraph 28.



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*Appeal against imposition of civil penalty<sup>F6</sup> other than by HMRC]*

**Textual Amendments**

**F6** Words in Sch. 7 Pt. 6 cross-heading inserted (1.4.2009) by [Revenue and Customs Appeals Order 2009 \(S.I. 2009/777\)](#), art. 1, **Sch. para. 4(2)**

- 28 (1) A person may appeal to the tribunal against—
- <sup>F7</sup>(a) .....
  - <sup>F7</sup>(...) a decision of the FSA or the OFT under paragraph 27.
- (2) A person may appeal to the High Court in Northern Ireland against a decision of DETINI under paragraph 27.
- (3) On the appeal the tribunal or court may—
- (a) set aside the decision appealed against, and
  - (b) impose any penalty that could have been imposed by the body whose decision is appealed or remit the matter to that body.
- <sup>F8</sup>(4) .....
- (5) In this paragraph “the tribunal” means the First-tier Tribunal or, where so provided by or determined under Tribunal Procedure Rules, the Upper Tribunal.
- (6) The Treasury may by order provide that, until a time specified in the order, appeals under sub-paragraph (1) are to be made—
- <sup>F9</sup>(a) .....
  - (b) in the case of a decision of the FSA, to the Financial Services and Markets Tribunal;
  - <sup>F10</sup>(c) .....
- (rather than to the tribunal).
- (7) An order under sub-paragraph (6) may provide that any enactment applies (with or without modifications) in relation to an appeal to a tribunal mentioned in paragraph <sup>F11</sup> ... [<sup>F12</sup>or (b)] of that sub-paragraph.
- (8) Such an order is subject to negative resolution procedure.

**Textual Amendments**

- F7** Words in Sch. 7 para. 28(1) omitted (1.4.2009) by virtue of [Revenue and Customs Appeals Order 2009 \(S.I. 2009/777\)](#), art. 1, **Sch. para. 4(3)**
- F8** Sch. 7 para. 28(4) omitted (1.4.2009) by virtue of [Revenue and Customs Appeals Order 2009 \(S.I. 2009/777\)](#), art. 1, **Sch. para. 4(4)**
- F9** Sch. 7 para. 28(6)(a) omitted (1.4.2009) by virtue of [Revenue and Customs Appeals Order 2009 \(S.I. 2009/777\)](#), art. 1, **Sch. para. 4(5)**
- F10** Sch. 7 para. 28(6)(c) omitted (1.9.2009) by virtue of [Transfer of Functions of the Consumer Credit Appeals Tribunal Order 2009 \(S.I. 2009/1835\)](#), art. 1, **Sch. 1 para. 11(a)** (with Sch. 4)
- F11** Word in Sch. 7 para. 28(7) omitted (1.4.2009) by virtue of [Revenue and Customs Appeals Order 2009 \(S.I. 2009/777\)](#), art. 1, **Sch. para. 4(6)**
- F12** Words in Sch. 7 para. 28(7) substituted (1.9.2009) by [Transfer of Functions of the Consumer Credit Appeals Tribunal Order 2009 \(S.I. 2009/1835\)](#), art. 1, **Sch. 1 para. 11(b)** (with Sch. 4)

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*Payment and recovery of civil penalties*

- 29 (1) A penalty imposed under paragraph 25 is payable to the enforcement authority that imposed it.
- (2) Any such penalty is a debt due to the authority and is recoverable accordingly.

**PART 7 U.K.**

ENFORCEMENT: OFFENCES

*Offences: failure to comply with requirement imposed by direction*

- 30 (1) A person who fails to comply with a requirement imposed by a direction under this Schedule commits an offence, subject to the following provisions.
- (2) No offence is committed if the person took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.
- (3) In deciding whether a person has committed an offence under this paragraph the court must consider whether the person followed any relevant guidance that was at the time—
- (a) issued by a supervisory authority or any other appropriate body,
  - (b) approved by the Treasury, and
  - (c) published in a manner approved by the Treasury as suitable in their opinion to bring the guidance to the attention of persons likely to be affected by it.
- (4) In sub-paragraph (3) “appropriate body” means a body that regulates or is representative of any trade, profession, business or employment carried on by the alleged offender.
- (5) A person guilty of an offence under this paragraph is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.
- (6) A person who is convicted of an offence under this paragraph is not liable to a penalty under paragraph 25 in respect of the same failure.

*Offences in connection with licences*

- 31 (1) A person commits an offence who for the purpose of obtaining a licence under paragraph 17—
- (a) provides information that is false in a material respect or a document that is not what it purports to be, and
  - (b) knows that, or is reckless as to whether, the information is false or the document is not what it purports to be.
- (2) A person guilty of an offence under this paragraph is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both.

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*Extra-territorial application of offences*

- 32 (1) An offence under this Schedule may be committed by a United Kingdom person by conduct wholly or partly outside the United Kingdom.
- (2) Nothing in this paragraph affects any criminal liability arising otherwise than under this paragraph.

*Prosecution of offences*

- 33 (1) Proceedings for an offence under this Schedule may be instituted in England and Wales only by—
- (a) the FSA;
  - (b) the Director of Revenue and Customs Prosecutions;
  - (c) the OFT;
  - (d) a local weights and measures authority; or
  - (e) the Director of Public Prosecutions.
- (2) Proceedings for an offence under this Schedule may be instituted in Northern Ireland only by—
- (a) the FSA;
  - (b) HMRC;
  - (c) the OFT;
  - (d) DETINI; or
  - (e) the Director of Public Prosecutions for Northern Ireland.
- (3) In section 168(4) of the Financial Services and Markets Act 2000 (c. 8) (appointment by FSA of persons to carry out investigation), after paragraph (b) insert—
- “(ba) a person may be guilty of an offence under Schedule 7 to the Counter-Terrorism Act 2008 (terrorist financing or money laundering);”.
- (4) In section 402(1) of that Act (power of FSA to institute proceedings), omit the “or” before paragraph (b) and after that paragraph insert—
- “or
- (c) Schedule 7 to the Counter-Terrorism Act 2008 (terrorist financing or money laundering).”.
- (5) HMRC may conduct a criminal investigation into any offence under this Schedule.
- (6) In sub-paragraph (5) “criminal investigation” has the meaning given by section 35(5) (b) of the Commissioners for Revenue and Customs Act 2005 (c. 11).

*Jurisdiction to try offences*

- 34 Where an offence under this Schedule is committed outside the United Kingdom—
- (a) proceedings for the offence may be taken at any place in the United Kingdom, and
  - (b) the offence may for all incidental purposes be treated as having been committed at any such place.

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*Time limit for summary proceedings*

- 35 (1) An information relating to an offence under this Schedule that is triable by a magistrates' court in England and Wales may be so tried if it is laid—
- (a) at any time within three years after the commission of the offence, and
  - (b) within twelve months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the knowledge of the prosecutor.
- (2) Summary proceedings in Scotland for an offence under this Schedule—
- (a) must not be commenced after the expiration of three years from the commission of the offence;
  - (b) subject to that, may be commenced at any time within twelve months after the date on which evidence sufficient in the Lord Advocate's opinion to justify the proceedings came to the knowledge of the Lord Advocate.
- Section 136(3) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (date when proceedings deemed to be commenced) applies for the purposes of this subparagraph as for the purposes of that section.
- (3) A magistrates' court in Northern Ireland has jurisdiction to hear and determine a complaint charging the commission of a summary offence under this Schedule provided that the complaint is made—
- (a) within three years from the time when the offence was committed, and
  - (b) within twelve months from the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the knowledge of the prosecutor.
- (4) For the purposes of this paragraph a certificate of the prosecutor (or, in Scotland, the Lord Advocate) as to the date on which such evidence as is referred to above came to their notice is conclusive evidence.

*Liability of officers of bodies corporate etc*

- 36 (1) If an offence under this Schedule committed by a body corporate is shown—
- (a) to have been committed with the consent or the connivance of an officer of the body corporate, or
  - (b) to be attributable to any neglect on the part of any such officer,
- the officer as well as the body corporate is guilty of an offence and liable to be proceeded against and punished accordingly.
- (2) If an offence under this Schedule committed by a partnership is shown—
- (a) to have been committed with the consent or the connivance of a partner, or
  - (b) to be attributable to any neglect on the part of a partner,
- the partner as well as the partnership is guilty of an offence and liable to be proceeded against and punished accordingly.
- (3) If an offence under this Schedule committed by an unincorporated association (other than a partnership) is shown—
- (a) to have been committed with the consent or the connivance of an officer of the association, or
  - (b) to be attributable to any neglect on the part of any such officer,

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the officer as well as the association is guilty of an offence and liable to be proceeded against and punished accordingly.

- (4) If the affairs of a body corporate are managed by its members, sub-paragraph (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body.
- (5) In this paragraph—
- “officer”—
- (a) in relation to a body corporate, means a director, manager, secretary, chief executive, member of the committee of management, or a person purporting to act in such a capacity, and
- (b) in relation to an unincorporated association, means any officer of the association or any member of its governing body, or a person purporting to act in such capacity;
- “partner” includes a person purporting to act as a partner.

#### *Proceedings against unincorporated bodies*

- 37 (1) Proceedings for an offence under this Schedule alleged to have been committed by a partnership or an unincorporated association must be brought in the name of the partnership or association (and not in that of its members).
- (2) In proceedings for such an offence brought against a partnership or unincorporated association—
- (a) section 33 of the Criminal Justice Act 1925 (c. 86) (procedure on charge of offence against corporation) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43) (corporations) apply as they do in relation to a body corporate;
- (b) section 70 of the Criminal Procedure (Scotland) Act 1995 (c. 46) (proceedings against bodies corporate) applies as it does in relation to a body corporate;
- (c) section 18 of the Criminal Justice (Northern Ireland) Act 1945 (c. 15 (N.I.)) (procedure on charge) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (corporations) apply as they do in relation to a body corporate.
- (3) Rules of court relating to the service of documents have effect in relation to proceedings for an offence under this Schedule as if the partnership or association were a body corporate.
- (4) A fine imposed on the partnership or association on its conviction of such an offence is to be paid out of the funds of the partnership or association.

## **PART 8** **U.K.**

### SUPPLEMENTARY AND GENERAL

#### *Report to Parliament*

- 38 (1) As soon as reasonably practicable after the end of each calendar year, the Treasury must—

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- (a) prepare a report about their exercise during that year of their functions under this Schedule, and
  - (b) lay a copy of the report before Parliament.
- (2) Sub-paragraph (1) does not apply in relation to a year if no direction under this Schedule is in force at any time in that year.

*Supervision by supervisory authority*

- 39 (1) A supervisory authority must take appropriate measures to monitor persons operating in the financial sector for whom it is the supervisory authority for the purpose of securing compliance by those persons with the requirements of any directions under this Schedule.
- (2) For the purposes of this Schedule—
- (a) the FSA is the supervisory authority for—
    - (i) credit institutions that are authorised persons;
    - (ii) financial institutions (except money service businesses that are not authorised persons and consumer credit financial institutions);
  - (b) the OFT is the supervisory authority for consumer credit financial institutions;
  - (c) HMRC are the supervisory authority for money service businesses that are not authorised persons;
  - (d) DETINI is the supervisory authority for credit unions in Northern Ireland.
- (3) Where under sub-paragraph (2) there is more than one supervisory authority for a person, the authorities may agree that one of them will act as the supervisory authority for that person for the purposes of this Schedule.
- (4) Where an agreement has been made under sub-paragraph (3), the authority that has agreed to act as the supervisory authority must—
- (a) where directions under this Schedule have been given to specified persons operating in the financial sector, notify those persons;
  - (b) where such directions have been given to all persons operating in the financial sector or to a description of such persons, publish the agreement in such way as it considers appropriate.
- (5) Where no agreement has been made under sub-paragraph (3), the supervisory authorities for a person must co-operate in the performance of their functions under this paragraph.

*Assistance in preparing guidance*

- 40 The Treasury must provide such assistance as may reasonably be required by a supervisory authority or other body drawing up guidance that, when issued and published with the approval of the Treasury, would be relevant guidance for the purposes of paragraph 25(3) (civil penalties) and 30(3) (offences: failure to comply with requirement imposed by direction).

*Functions of Financial Services Authority*

- 41 (1) The functions of the FSA under this Schedule shall be treated for the purposes of Parts 1, 2 and 4 of Schedule 1 to the Financial Services and Markets Act 2000 (c. 8)

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(general provisions relating to the Authority) as if they were functions conferred on the FSA under that Act.

- (2) Any penalty under paragraph 25 (civil penalties) received by the FSA is to be applied towards expenses incurred by it in connection with its functions under this Schedule or for any incidental purpose.

#### *Notices*

- 42 (1) A notice under this Schedule may be given to a person—
- (a) by posting it to the person's last known address, or
  - (b) where the person is a body corporate, partnership or unincorporated association, by posting it to the registered or principal office of the body, partnership or association.
- (2) Where the Treasury are under a duty to give a notice to a person but do not have an address for them, they must make arrangements for the notice to be given to the person at the first available opportunity.

#### *Crown application*

- 43 (1) This Schedule binds the Crown, subject as follows.
- (2) No contravention by the Crown of a provision of this Schedule makes the Crown criminally liable.
- (3) The following courts may, on the application of a person appearing to the court to have an interest, declare unlawful any act or omission of the Crown that constitutes such a contravention—
- (a) the High Court in England and Wales;
  - (b) the Court of Session;
  - (c) the High Court in Northern Ireland.
- (4) Nothing in this paragraph affects Her Majesty in her private capacity.

This is to be construed as if section 38(3) of the Crown Proceedings Act 1947 (c. 44) (meaning of Her Majesty in her private capacity) were contained in this Schedule.

#### *Meaning of “United Kingdom person”*

- 44 (1) In this Schedule “United Kingdom person” means a United Kingdom national or a body incorporated or constituted under the law of any part of the United Kingdom.
- (2) For this purpose a United Kingdom national is an individual who is—
- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;
  - (b) a person who under the British Nationality Act 1981 (c. 61) is a British subject; or
  - (c) a British protected person within the meaning of that Act.
- (3) Her Majesty may by Order in Council extend the definition in sub-paragraph (1) so as to apply to bodies incorporated or constituted under the law of any of the Channel Islands, the Isle of Man or any British overseas territory.

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### *Interpretation*

45 (1) In this Schedule—

“authorised person” means a person who is authorised for the purposes of the Financial Services and Markets Act 2000 (c. 8);

“business relationship” means a business, professional or commercial relationship between a relevant person and a customer, which is expected by the relevant person, at the time when contact is established, to have an element of duration;

“conduct” includes acts and omissions;

“consumer credit financial institution” means a financial institution that under section 21 of the Consumer Credit Act 1974 (c. 39) requires a licence to carry on a consumer credit business, other than—

- (a) a person covered by a group licence issued by the Office of Fair Trading under section 22 of that Act,
- (b) a money service business, or
- (c) an authorised person;

“country” includes territory;

“document” means information recorded in any form;

“money service business” means an undertaking which by way of business operates a currency exchange office, transmits money (or any representations of monetary value) by any means or cashes cheques which are made payable to customers;

“notice” means a notice in writing.

(2) In this Schedule any reference to an amount in one currency includes the equivalent amount in any other currency.

(3) Unless otherwise defined, expressions used in this Schedule and in—

- (a) Directive [2005/60/EC](#) of the European Parliament and of the Council of 26th October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, or
- (b) Commission Directive [2006/70/EC](#) of 1st August 2006 laying down implementing measures for that directive,

have the same meaning as in the relevant directive.

### *Index of defined expressions*

46 In this Schedule the following expressions are defined or otherwise explained by the provisions indicated—

authorised person	paragraph 45(1)
the banking consolidation directive (in Part 2 of this Schedule)	paragraph 7
biological weapon	paragraph 2(6)
business relationship	paragraph 45(1)
chemical weapon	paragraph 2(5)
conduct	paragraph 45(1)



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consumer credit financial institution	paragraph 45(1)
country	paragraph 45(1)
credit institution	paragraph 5(1)
customer due diligence measures	paragraph 10(3)
designated person, in relation to a direction	paragraph 9(3)
DETINI	paragraph 18(1)(d)
document	paragraph 45(1)
enforcement authority	paragraph 18(1)
enforcement officer (in Part 5 of this Schedule)	paragraph 18(2)
financial institution	paragraph 5(2)
the FSA	paragraph 18(1)(a)
HMRC	paragraph 18(1)(b)
the life assurance consolidation directive (in Part 2 of this Schedule)	paragraph 7
local enforcement officer	paragraph 18(3)
the markets in financial instruments directive (in Part 2 of this Schedule)	paragraph 7
money laundering	paragraph 2(2)
money service business	paragraph 45(1)
notice	paragraph 45(1)
nuclear weapon	paragraph 2(3)
the OFT	paragraph 18(1)(c)
persons operating in the financial sector	paragraph 4
radiological weapon	paragraph 2(4)
relevant person, in relation to a direction	paragraph 3(2)
supervisory authority	paragraph 39(2)
terrorist financing	paragraph 2(1)
United Kingdom person	paragraph 44

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## SCHEDULE 8 U.K.

Section 76

### OFFENCES RELATING TO INFORMATION ABOUT MEMBERS OF ARMED FORCES ETC: SUPPLEMENTARY PROVISIONS

#### Commencement Information

**I51** [Sch. 8](#) in force at 16.2.2009 by [S.I. 2009/58](#), [art. 2\(d\)](#)

PROSPECTIVE

The following Schedule is inserted after Schedule 8 to the Terrorism Act 2000 (c. 11)—

#### “SCHEDULE 8A U.K.

##### OFFENCE UNDER SECTION 58A: SUPPLEMENTARY PROVISIONS

###### *Introduction*

- 1 (1) This Schedule makes supplementary provision relating to the offence in section 58A (eliciting, publishing or communicating information about members of the armed forces etc).
- (2) The purpose of this Schedule is to comply with Directive [2000/31/EC](#) of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (“the E-Commerce Directive”).

###### *Domestic service providers: extension of liability*

- 2 (1) This paragraph applies where a service provider is established in the United Kingdom (a “domestic service provider”).
- (2) Section 58A applies to a domestic service provider who—
  - (a) commits any of the acts specified in subsection (1) of that section in an EEA state other than the United Kingdom, and
  - (b) does so in the course of providing information society services, as it applies to a person who commits such an act in the United Kingdom.
- (3) In such a case—
  - (a) proceedings for the offence may be taken at any place in the United Kingdom, and
  - (b) the offence may for all incidental purposes be treated as having been committed at any such place.

###### *Non-UK service providers: restriction on proceedings*

- 3 (1) This paragraph applies where a service provider is established in an EEA state other than the United Kingdom (a “non-UK service provider”).

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- (2) Proceedings for an offence under section 58A must not be brought against a non-UK service provider in respect of anything done in the course of the provision of information society services unless the following conditions are met.
- (3) The conditions are—
- (a) that the bringing of proceedings is necessary for one of the following reasons—
    - (i) public policy,
    - (ii) public security, including the safeguarding of national security and defence;
  - (b) that the proceedings are brought against an information society service that prejudices the objectives referred to in paragraph (a) or presents a serious and grave risk of prejudice to those objectives;
  - (c) that the bringing of the proceedings is proportionate to those objectives.

*Exceptions for mere conduits*

- 4 (1) A service provider is not guilty of an offence under section 58A in respect of anything done in the course of providing so much of an information society service as consists in—
- (a) the provision of access to a communication network, or
  - (b) the transmission in a communication network of information provided by a recipient of the service,
- if the following condition is satisfied.
- (2) The condition is that the service provider does not—
- (a) initiate the transmission,
  - (b) select the recipient of the transmission, or
  - (c) select or modify the information contained in the transmission.
- (3) For the purposes of sub-paragraph (1)—
- (a) the provision of access to a communication network, and
  - (b) the transmission of information in a communication network,
- includes the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.
- (4) Sub-paragraph (3) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

*Exception for caching*

- 5 (1) This paragraph applies where an information society service consists in the transmission in a communication network of information provided by a recipient of the service.
- (2) The service provider is not guilty of an offence under section 58A in respect of the automatic, intermediate and temporary storage of information so provided, if—
- (a) the storage of the information is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request, and

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(b) the following conditions are satisfied.

- (3) The first condition is that the service provider does not modify the information.
- (4) The second condition is that the service provider complies with any conditions attached to having access to the information.
- (5) The third condition is that if the service provider obtains actual knowledge that—
  - (a) the information at the initial source of the transmission has been removed from the network,
  - (b) access to it has been disabled, or
  - (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information,
 the service provider expeditiously removes the information or disables access to it.

#### *Exception for hosting*

- 6 (1) A service provider is not guilty of an offence under section 58A in respect of anything done in the course of providing so much of an information society service as consists in the storage of information provided by a recipient of the service, if the condition is met.
- (2) The condition is that—
  - (a) the service provider had no actual knowledge when the information was provided that it contained offending material, or
  - (b) on obtaining actual knowledge that the information contained offending material, the service provider expeditiously removed the information or disabled access to it.
- (3) “Offending material” means information about a person who is or has been—
  - (a) a member of Her Majesty's forces,
  - (b) a member of any of the intelligence services, or
  - (c) a constable,
 which is of a kind likely to be useful to a person committing or preparing an act of terrorism.
- (4) This paragraph does not apply if the recipient of the service is acting under the authority or control of the service provider.
- (5) In this paragraph “the intelligence services” means the Security Service, the Secret Intelligence Service and GCHQ (within the meaning of section 3 of the Intelligence Services Act 1994 (c. 13)).

#### *Interpretation*

- 7 (1) In this Schedule—
 

“information society services”—

  - (a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive [98/34/EC](#) of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and

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- (b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”;
- “recipient”, in relation to a service, means any person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible;
- “service provider” means a person providing an information society service.
- (2) For the purposes of this Schedule whether a service provider is established in the United Kingdom, or in some other EEA state, shall be determined in accordance with the following provisions—
- (a) a service provider is established in the United Kingdom, or in a particular EEA state, if the service provider—
- (i) effectively pursues an economic activity using a fixed establishment in the United Kingdom, or that EEA state, for an indefinite period, and
- (ii) is a national of an EEA state or a company or firm mentioned in Article 48 of the EEC Treaty;
- (b) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider;
- (c) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment at the centre of the service provider's activities relating to that service.”.

## SCHEDULE 9 **U.K.**

Section 99

### REPEALS AND REVOCATIONS

PROSPECTIVE

## PART 1 **U.K.**

### RETENTION AND USE OF FINGERPRINTS AND SAMPLES

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Terrorism Act 2000 (c. 11)	In Schedule 8, paragraph 14(3).

*Status: Point in time view as at 01/10/2009.**Changes to legislation: Counter-Terrorism Act 2008 is up to date with all changes known to be in force on or before 21 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)***PART 2** U.K.

## DISCLOSURE OF INFORMATION AND THE INTELLIGENCE SERVICES

**Commencement Information****I52** Sch. 9 Pt. 2 in force at 16.2.2009 by S.I. 2009/58, art. 2(j)

<i>Title and number</i>	<i>Extent of repeal or revocation</i>
Anti-terrorism, Crime and Security Act 2001 (c. 24)	Section 19(2)(a).
Representation of the People (England and Wales) Regulations 2001 (S.I. 2001/341)	Regulation 45E(3) and (4). In Regulation 109— (a) paragraph (1)(g) to (i); (b) in paragraph (4)(a), the words preceding paragraph (i); (c) paragraph (4)(b) and the word “and” immediately preceding it. In Regulation 115(2), “45E(3),”.
Representation of the People (Scotland) Regulations 2001 (S.I. 2001/497)	Regulation 45D(3) and (4). In Regulation 108— (a) paragraph (1)(g) to (i); (b) in paragraph (4)(a), the words preceding paragraph (i); (c) paragraph (4)(b) and the word “and” immediately preceding it. In Regulation 115(2), “45D(3),”.
Immigration, Asylum and Nationality Act 2006 (c. 13)	Section 38.
Statistics and Registration Service Act 2007 (c. 18)	Section 39(4)(g). In section 67, the definition of “Intelligence Service”.

**PART 3** U.K.

## FORFEITURE

**Commencement Information****I53** Sch. 9 Pt. 3 in force at 18.6.2009 by S.I. 2009/1256, art. 2(e)

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Terrorism Act 2000 (c. 11)	Section 54(7) to (9). Section 58(5) to (7).

*Status: Point in time view as at 01/10/2009.*

**Changes to legislation:** Counter-Terrorism Act 2008 is up to date with all changes known to be in force on or before 21 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## PART 4 **U.K.**

### FINANCIAL RESTRICTIONS PROCEEDINGS

#### Commencement Information

**I54** Sch. 9 Pt. 4 in force at 16.2.2009 by S.I. 2009/58, art. 2(j)

<i>Title and number</i>	<i>Extent of revocation</i>
Terrorism (United Nations Measures) Order 2001 (S.I. 2001/3365)	Article 4(7) and (8).
Al-Qa'ida and Taliban (United Nations Measures) Order 2002 (S.I. 2002/111)	Article 8(7) and (8).
Terrorism (United Nations Measures) Order 2006 (S.I. 2006/2657)	Article 5(4) and (5).
Al-Qaida and Taliban (United Nations Measures) Order 2006 (S.I. 2006/2952)	Article 5(4) and (5).

These revocations do not affect an application made before the commencement of section 63.

## PART 5 **U.K.**

### CONTROL ORDERS

#### Commencement Information

**I55** Sch. 9 Pt. 5 in force at 16.2.2009 by S.I. 2009/58, art. 2(j)

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Prevention of Terrorism Act 2005 (c. 2)	In section 3— (a) subsection (1)(c); (b) in subsection (7) the words “within 7 days of the court's giving permission or (as the case may be) making its determination on the reference”. Section 8(8). In the Schedule, in paragraph 5(1)(a) the words “, at any time after a control order has been made,”.

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## PART 6 **U.K.**

### PRE-CHARGE DETENTION

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#### Commencement Information

**I56** Sch. 9 Pt. 6 in force at 16.2.2009 by S.I. 2009/58, art. 2(j)

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<i>Short title and Chapter</i>	<i>Extent of repeal</i>
Terrorism Act 2000 (c. 11)	In Schedule 8, in paragraph 29(4)(a) and (c), the words “after consulting the Lord Chancellor”.

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**Status:**

Point in time view as at 01/10/2009.

**Changes to legislation:**

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