

*Status: Point in time view as at 27/11/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Anti-terrorism, Crime and Security Act 2001, SCHEDULE 3. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 3

Section 6

#### FREEZING ORDERS

##### *Interpretation*

- 1       References in this Schedule to a person specified in a freezing order as a person to whom or for whose benefit funds are not to be made available are to be read in accordance with section 5(4).

##### *Funds*

- 2       A freezing order may include provision that funds include gold, cash, deposits, securities (such as stocks, shares and debentures) and such other matters as the order may specify.

##### *Making funds available*

- 3       (1) A freezing order must include provision as to the meaning (in relation to funds) of making available to or for the benefit of a person.
- (2) In particular, an order may provide that the expression includes—
- (a) allowing a person to withdraw from an account;
  - (b) honouring a cheque payable to a person;
  - (c) crediting a person's account with interest;
  - (d) releasing documents of title (such as share certificates) held on a person's behalf;
  - (e) making available the proceeds of realisation of a person's property;
  - (f) making a payment to or for a person's benefit (for instance, under a contract or as a gift or under any enactment such as the enactments relating to social security);
  - (g) such other acts as the order may specify.

##### *Licences*

- 4       (1) A freezing order must include—
- (a) provision for the granting of licences authorising funds to be made available;
  - (b) provision that a prohibition under the order is not to apply if funds are made available in accordance with a licence.
- (2) In particular, an order may provide—
- (a) that a licence may be granted generally or to a specified person or persons or description of persons;
  - (b) that a licence may authorise funds to be made available to or for the benefit of persons generally or a specified person or persons or description of persons;

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- (c) that a licence may authorise funds to be made available generally or for specified purposes;
- (d) that a licence may be granted in relation to funds generally or to funds of a specified description;
- (e) for a licence to be granted in pursuance of an application or without an application being made;
- (f) for the form and manner in which applications for licences are to be made;
- (g) for licences to be granted by the Treasury or a person authorised by the Treasury;
- (h) for the form in which licences are to be granted;
- (i) for licences to be granted subject to conditions;
- (j) for licences to be of a defined or indefinite duration;
- (k) for the charging of a fee to cover the administrative costs of granting a licence;
- (l) for the variation and revocation of licences.

#### *Information and documents*

- 5 (1) A freezing order may include provision that a person—
- (a) must provide information if required to do so and it is reasonably needed for the purpose of ascertaining whether an offence under the order has been committed;
  - (b) must produce a document if required to do so and it is reasonably needed for that purpose.
- (2) In particular, an order may include—
- (a) provision that a requirement to provide information or to produce a document may be made by the Treasury or a person authorised by the Treasury;
  - (b) provision that information must be provided, and a document must be produced, within a reasonable period specified in the order and at a place specified by the person requiring it;
  - (c) provision that the provision of information is not to be taken to breach any restriction on the disclosure of information (however imposed);
  - (d) provision restricting the use to which information or a document may be put and the circumstances in which it may be disclosed;
  - (e) provision that a requirement to provide information or produce a document does not apply to privileged information or a privileged document;
  - (f) provision that information is privileged if the person would be entitled to refuse to provide it on grounds of legal professional privilege in proceedings in the High Court or (in Scotland) on grounds of confidentiality of communications in proceedings in the Court of Session;
  - (g) provision that a document is privileged if the person would be entitled to refuse to produce it on grounds of legal professional privilege in proceedings in the High Court or (in Scotland) on grounds of confidentiality of communications in proceedings in the Court of Session;
  - (h) provision that information or a document held with the intention of furthering a criminal purpose is not privileged.

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### *Disclosure of information*

- 6 (1) A freezing order may include provision requiring a person to disclose information as mentioned below if the following three conditions are satisfied.
- (2) The first condition is that the person required to disclose is specified or falls within a description specified in the order.
- (3) The second condition is that the person required to disclose knows or suspects, or has grounds for knowing or suspecting, that a person specified in the freezing order as a person to whom or for whose benefit funds are not to be made available—
- (a) is a customer of his or has been a customer of his at any time since the freezing order came into force, or
  - (b) is a person with whom he has dealings in the course of his business or has had such dealings at any time since the freezing order came into force.
- (4) The third condition is that the information—
- (a) on which the knowledge or suspicion of the person required to disclose is based, or
  - (b) which gives grounds for his knowledge or suspicion, came to him in the course of a business in the regulated sector.
- (5) The freezing order may require the person required to disclose to make a disclosure to the Treasury of that information as soon as is practicable after it comes to him.
- (6) The freezing order may include—
- (a) provision that Schedule 3A to the Terrorism Act 2000 (c. 11) is to have effect for the purpose of determining what is a business in the regulated sector;
  - (b) provision that the disclosure of information is not to be taken to breach any restriction on the disclosure of information (however imposed);
  - (c) provision restricting the use to which information may be put and the circumstances in which it may be disclosed by the Treasury;
  - (d) provision that the requirement to disclose information does not apply to privileged information;
  - (e) provision that information is privileged if the person would be entitled to refuse to disclose it on grounds of legal professional privilege in proceedings in the High Court or (in Scotland) on grounds of confidentiality of communications in proceedings in the Court of Session;
  - (f) provision that information held with the intention of furthering a criminal purpose is not privileged.

### *Offences*

- 7 (1) A freezing order may include any of the provisions set out in this paragraph.
- (2) A person commits an offence if he fails to comply with a prohibition imposed by the order.
- (3) A person commits an offence if he engages in an activity knowing or intending that it will enable or facilitate the commission by another person of an offence under a provision included under sub-paragraph (2).
- (4) A person commits an offence if—

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- (a) he fails without reasonable excuse to provide information, or to produce a document, in response to a requirement made under the order;
  - (b) he provides information, or produces a document, which he knows is false in a material particular in response to such a requirement or with a view to obtaining a licence under the order;
  - (c) he recklessly provides information, or produces a document, which is false in a material particular in response to such a requirement or with a view to obtaining a licence under the order;
  - (d) he fails without reasonable excuse to disclose information as required by a provision included under paragraph 6.
- (5) A person does not commit an offence under a provision included under sub-paragraph (2) or (3) if he proves that he did not know and had no reason to suppose that the person to whom or for whose benefit funds were made available, or were to be made available, was the person (or one of the persons) specified in the freezing order as a person to whom or for whose benefit funds are not to be made available.
- (6) A person guilty of an offence under a provision included under sub-paragraph (2) or (3) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.
- (7) A person guilty of an offence under a provision included under sub-paragraph (4) is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale or to both.

*Offences: procedure*

- 8 (1) A freezing order may include any of the provisions set out in this paragraph.
- (2) Proceedings for an offence under the order are not to be instituted in England and Wales except by or with the consent of the Treasury or the Director of Public Prosecutions.
- (3) Proceedings for an offence under the order are not to be instituted in Northern Ireland except by or with the consent of the Treasury or the Director of Public Prosecutions for Northern Ireland.
- (4) Despite anything in section 127(1) of the Magistrates' Courts Act 1980 (c. 43) (information to be laid within 6 months of offence) an information relating to an offence under the order which is triable by a magistrates' court in England and Wales may be so tried if it is laid at any time in the period of one year starting with the date of the commission of the offence.
- (5) In Scotland summary proceedings for an offence under the order may be commenced at any time in the period of one year starting with the date of the commission of the offence.
- (6) In its application to an offence under the order Article 19(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (time limit within which complaint charging offence must be made) is to have effect as if the reference to six months were a reference to twelve months.

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*Offences by bodies corporate etc.*

- 9 (1) A freezing order may include any of the provisions set out in this paragraph.
- (2) If an offence under the order—
- (a) is committed by a body corporate, and
  - (b) is proved to have been committed with the consent or connivance of an officer, or to be attributable to any neglect on his part,
- he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) These are officers of a body corporate—
- (a) a director, manager, secretary or other similar officer of the body;
  - (b) any person purporting to act in any such capacity.
- (4) If the affairs of a body corporate are managed by its members sub-paragraph (2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were an officer of the body.
- (5) If an offence under the order—
- (a) is committed by a Scottish partnership, and
  - (b) is proved to have been committed with the consent or connivance of a partner, or to be attributable to any neglect on his part,
- he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

*Compensation*

- 10 (1) A freezing order may include provision for the award of compensation to or on behalf of a person on the grounds that he has suffered loss as a result of—
- (a) the order;
  - (b) the fact that a licence has not been granted under the order;
  - (c) the fact that a licence under the order has been granted on particular terms rather than others;
  - (d) the fact that a licence under the order has been varied or revoked.
- (2) In particular, the order may include—
- (a) provision about the person who may make a claim for an award;
  - (b) provision about the person to whom a claim for an award is to be made (which may be provision that it is to be made to the High Court or, in Scotland, the Court of Session);
  - (c) provision about the procedure for making and deciding a claim;
  - (d) provision that no compensation is to be awarded unless the claimant has behaved reasonably (which may include provision requiring him to mitigate his loss, for instance by applying for a licence);
  - (e) provision that compensation must be awarded in specified circumstances or may be awarded in specified circumstances (which may include provision that the circumstances involve negligence or other fault);
  - (f) provision about the amount that may be awarded;
  - (g) provision about who is to pay any compensation awarded (which may include provision that it is to be paid or reimbursed by the Treasury);

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- (h) provision about how compensation is to be paid (which may include provision for payment to a person other than the claimant).

*Treasury's duty to give reasons*

11 <sup>F1</sup>(1) A freezing order must include provision that if—

- (a) a person is specified in the order as a person to whom or for whose benefit funds are not to be made available, and  
(b) he makes a written request to the Treasury to give him the reason why he is so specified,

as soon as is practicable the Treasury must give the person the reason in writing.

<sup>F2</sup>(2) Sub-paragraph (1) does not apply if, or to the extent that, particulars of the reason would not be required to be disclosed to the applicant in proceedings to set aside the freezing order. ]

**Textual Amendments**

- F1** Sch. 3 para. 11 renumbered as Sch. 3 para. 11(1) (27.11.2008) by [Counter-Terrorism Act 2008 \(c. 28\)](#), [ss. 70, 100\(2\)](#) (with [s. 101\(2\)](#))  
**F2** Sch. 3 para. 11(2) inserted (27.11.2008) by [Counter-Terrorism Act 2008 \(c. 28\)](#), [ss. 70, 100\(2\)](#) (with [s. 101\(2\)](#))

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