

EXPLANATORY MEMORANDUM TO
THE FINANCIAL RESTRICTIONS PROCEEDINGS (UN TERRORISM ORDERS)
ORDER 2009

2009 No. 1911

1. This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order adds the Terrorism (United Nations Measures) Order 2009 (S.I. 2009/1747) ("the 2009 Order") to the definition of "UN terrorism orders" for the purposes of section 63 of the Counter-Terrorism Act 2008 (c.28) and omits the Terrorism (United Nations Measures) Order 2001 (S.I. 2001/3365) ("the 2001 Order") and the Terrorism (United Nations Measures) Order 2006 (S.I. 2006/2657) ("the 2006 Order") from that definition. Section 63 enables a person affected by a decision made by the Treasury in connection with the exercise of their functions under a UN terrorism order to apply to the court to have the decision set aside.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The 2006 Order and other Orders in Council in relation to terrorism and Al-Qaida and the Taliban (together defined in section 64 of the Counter-Terrorism Act 2008 as "the UN terrorism orders"), provide the Treasury with powers in relation to the freezing of assets and imposition of prohibitions on the making available of funds, financial services and economic resources to specified persons.

4.2 Under Part 6 of the Counter-Terrorism Act 2008 a person affected by a Treasury decision made under a UN terrorism order may apply to the court for the decision to be set aside. Part 6 makes provisions in respect of any subsequent proceedings including in relation to the appointment of a special advocate and the use of intercepted communications.

4.3 The 2009 Order revokes the 2006 Order, although certain directions made by the Treasury under the 2006 Order or under the 2001 Order which remained in force by virtue of provisions in the 2006 Order and which are in effect immediately before the coming into force of the 2009 Order will continue in effect until 31st August 2010 unless revoked earlier. This Order adds the 2009 Order to the list of "UN terrorism orders" in section 64 of the Counter-Terrorism Act so that a decision made by the Treasury under the 2009 Order will be subject to the right of challenge and other provisions in Part 6 of the Counter-Terrorism Act. The Order removes the 2006 Order and the 2001 Order from the definition of "UN terrorism orders" with effect from 31st August 2010.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Exchequer Secretary to the Treasury has made the following statement regarding Human Rights:

“In my view the provisions of the Financial Restrictions Proceedings (UN Terrorism Orders) Order 2009 are compatible with the Convention rights.”

7. Policy background

- ***What is being done and why***

7.1 In October 2006 the Economic Secretary to the Treasury in a statement to Parliament announced that the Treasury would use “closed source information” (i.e. material the disclosure of which would cause serious harm to the public interest) in exercising powers under the 2006 Order and other financial sanctions powers, and that the use of such material would be subject to proper judicial safeguards, including the provision of a special advocate system.

7.2 Part 6 of the Counter-Terrorism Act 2008 is intended to provide such safeguards and makes provisions for challenges by persons affected by decisions made under the 2006 Order and certain other Orders in Council, and includes provision for the appointment of special advocates and in relation to the use of intercepted communications.

7.3 This Order applies the provisions of Part 6 of the Counter-Terrorism Act to the 2009 Order and removes from the statute references to the 2006 Order and the 2001 Order from 31st August 2010 as from that date any directions made under these Orders which are still in force will cease to have effect.

- ***Consolidation***

7.4 There are no plans to consolidate the instrument

8. Consultation outcome

8.1 There has been no consultation on this instrument.

9. Guidance

9.1 General guidance with regard to financial sanctions and the relevant legislation is available on Her Majesty’s Treasury website (www.hm-treasury.gov.uk).

10. Impact

10.1 The impact on business, charities or voluntary bodies is expected to be minimal.

10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The basis for the final decision on what action to take in respect of small business was not subject to consultation.

12. Monitoring & review

12.1 The Treasury will continue to monitor all aspects of financial sanctions legislation.

13. Contact

The Asset Freezing Unit at Her Majesty's Treasury, Tel: 0207 270 5454 or e-mail assetfreezingunit@hm-treasury.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: HM Treasury	Title: Impact Assessment of Terrorism (United Nations Measures) Order (Consequential Amendments) Regulations 2009 & The Financial Restrictions Regulations 2009	
Stage: Final/Implementation	Version: 1	Date: xx July 2009
Related Publications: Terrorism (United Nations Measures) Order 2006, Terrorism (United Nations Measures) Order 2009 ("the 2009 Order"), Counter-Terrorism Act 2008, Money Laundering Regulations 2007, Transfer of Funds (Information on the Payer) Regulations 2007, Payment Services Regulations 2009		

Available to view or download at:

<http://www.hm-treasury.gov.uk>

Contact for enquiries: Asset Freezing Unit

Telephone: 0207 270 5454

What is the problem under consideration? Why is government intervention necessary?

(a) Under part 6 of the Counter-Terrorism Act 2008 a person affected by a Treasury decision under a UN terrorism order may apply to the court to challenge the decision and makes provisions in respect of any subsequent proceedings. The Treasury wish to apply Part 6 of the Act to the 2009 Order.

(b) Three Regulations refer to particular offences under the Terrorism (United Nations Measures) Order 2006; the Treasury wish to keep these references up to date by adding the equivalent references in the Terrorism (United Nations Measures) Order 2009.

Legislation is required to add the necessary references to the 2009 Order to the existing

What are the policy objectives and the intended effects?

The purposes of the changes are (a) to ensure an effective right to challenge asset freezing decisions under the 2009 Order, and (b) to provide that Regulations which refer to offences under the 2006 Order be updated by reference to equivalent offences under the 2009 Order.

What policy options have been considered? Please justify any preferred option.

1. Make consequential amendments to other legislation to reflect the recent updating of the Treasury's asset freezing legislation.
2. No other options are available

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? HMT will keep the asset freezing regime under review and will continue to report quarterly to Parliament on use of powers.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

Sarah McCarthy-Fry Date: 11th July 2009

Summary: Analysis & Evidence

Policy Option: 1	Description:
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' These Orders make consequential amendments to other legislation and regulations. These are not expected to generate any additional costs.
	One-off (Transition) Yrs	
	£ N/A	
	Average Annual Cost (excluding one-off)	
	£ N/A	Total Cost (PV) £
Other key non-monetised costs by 'main affected groups' None expected.		

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' These amendments are not expected to create any monetised benefits.
	One-off Yrs	
	£ N/A	
	Average Annual Benefit	
	£ N/A	Total Benefit (PV) £
Other key non-monetised benefits by 'main affected groups' One of these amendments will ensure persons affected by a designation retain the right to effective challenge of their designation through the provisions in the Counter Terrorism Act 2009		

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	UK				
On what date will the policy be implemented?	10 August 2009				
Which organisation(s) will enforce the policy?	N/A				
What is the total annual cost of enforcement for these	£ N/A				
Does enforcement comply with Hampton principles?	N/A				
Will implementation go beyond minimum EU requirements?	No				
What is the value of the proposed offsetting measure per year?	£ N/A				
What is the value of changes in greenhouse gas emissions?	£ N/A				
Will the proposal have a significant impact on competition?	No				
Annual cost (£-£) per organisation (excluding one-off)	<table style="width: 100%; border: none;"> <tr> <td style="width: 25%; text-align: center;">Micro N/A</td> <td style="width: 25%; text-align: center;">Small N/A</td> <td style="width: 25%; text-align: center;">Medium N/A</td> <td style="width: 25%; text-align: center;">Large N/A</td> </tr> </table>	Micro N/A	Small N/A	Medium N/A	Large N/A
Micro N/A	Small N/A	Medium N/A	Large N/A		

Are any of these organisations exempt?	No	No	N/A	N/A
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Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase	£	Decrease	£
		Net	£

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Evidence Base (for summary sheets)

International and Domestic Policy Context

The Treasury implements obligations conferred by United Nations Security Council Resolutions in relation to terrorism and Al-Qa'ida and the Taliban which require Member States to freeze the assets of those involved in terrorist acts, and to prohibit funds and financial services being made available to those involved in terrorist acts, by Orders in Council.

Part 6 of the Counter-Terrorism Act 2008 provided that a person affected by a decision made by the Treasury under one of these Orders could apply to court to have the decision set aside, and made provisions in any subsequent proceedings for the appointment of special advocates and for the use of intercepted communications.

The 2009 Order revokes the 2006 Order (although certain directions made by the Treasury under this Order will continue in force for a limited time).

The Money Laundering Regulations 2007 and the Transfer of Funds (Information on the Payer) Regulations 2007 have a definition of 'terrorist financing' for the purposes of the regulations which includes the 2006 Order. The Payment Services Regulations 2009 refer to a number of offences – including offences under the 2006 Order – conviction of which would be grounds to refuse a small payment institution's application for registration under the Regulations

Policy objectives

The Counter-terrorist asset freezing regime helps prevent terrorist acts by preventing funds, economic resources or financial services from being used or diverted for terrorist purposes. Minor consequential amendments are required to the Money Laundering Regulations 2007, Transfer of Funds (Information on the Payer) Regulations 2007 and Payment Services Regulations 2009 to reflect the coming into force new asset freezing legislation in August 2009 and ensure that Regulations which refer to particular offences under the 2006 Order refer to the equivalent offences under the 2009 Order. Amendments are also required to section 64(1) of the Counter Terrorism Act 2008 to ensure anyone affected by an asset freezing decision under the 2009 Order has the right to challenge that decision.

Policy options

These changes are essential to ensure consistency across UK legislation and to ensure that persons affected by asset freezing decisions have an effective right to challenge. These Statutory Instruments are the only way of making the necessary changes.

Costs and Benefits

Costs

As these Instruments make consequential amendments to legislation we expect there to be no cost to affected parties.

There will be no compliance or enforcement costs arising from the consequential amendments. Compliance and enforcement of the asset freezing regime in the UK falls to HMT and the Police.

Benefits

There will be no financial benefits from these amendments.

The amendment to the Counter Terrorism Act 2008 will add this Order to the definition of 'UN terrorism orders' under section 63 of the Act, as a result of which any person affected by a decision under the Order may apply to the High Court to set aside the decision.

Offences and penalty provisions

These Statutory Instruments do not create any additional offences to those already in existence in asset freezing legislation.

Conclusion

Statutory Instruments are needed to make necessary consequential amendments following the coming into force of the Terrorism (United Nations Measures) Order 2009.

Regarding the **specific impact tests** in the Checklist:

Human Rights

The amendment to the Counter Terrorism Act will satisfy the right to a fair hearing under article 6 by providing that any person affected by a decision under the 2009 Order may apply to the High Court to set aside the decision, and by providing for the appointment of special advocates where appropriate.

Other impacts

The following issues have also been considered in this assessment and the Government has decided that these measures have no impact on them.

- Competition
- Small Firms
- Legal aid
- Sustainable development
- Carbon assessment and other environment
- Health
- Race, Disability, Gender equality
- Rural proofing

Consultation

No formal consultation has taken place outside of Government, however, the Treasury has frequent contact with designated persons and their legal representatives. The 2009 Order took account of these views, as well as the views of the judiciary in related legal judgments. Informal discussions were also held with the financial sector.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	Yes	No
Rural Proofing	No	No