

EXPLANATORY MEMORANDUM TO

THE ANDREY LUGOVOY AND DMITRI KOVTUN FREEZING ORDER 2020

2020 No. 36

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The purpose of the instrument is to make a freezing order (the “Order”) that prohibits persons from making funds available to or for the benefit of Andrey Lugovoy and Dmitri Kovtun, in accordance with relevant provisions contained in the Act.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments. This instrument has been laid before Parliament less than 21 days before it comes into force.

- 3.1 The instrument must come into force on 19 January 2020, when the 2018 Order expires, so as to ensure the asset freezing provisions do not lapse.
- 3.2 The instrument ceases to have effect at the end of the period of 2 years starting with the day on which it is made, in accordance with s.8 of the Anti-terrorism, Crime and Security Act 2001 (“the Act”).
- 3.3 The Treasury provides a dedicated email address and telephone number to deal with queries from the financial sector and other affected persons. A notice explaining the Order is available on the Treasury website and was emailed to subscribers.

Other matters of interest to the House of Commons

- 3.4 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
- 4.2 This instrument applies to all of the United Kingdom, and outside the United Kingdom, to any UK national, any body incorporated under the law of any part of the United Kingdom, a person under the British Nationality Act 1981 that is a British subject, or a British protected person under that Act.

5. European Convention on Human Rights

- 5.1 The Economic Secretary to the Treasury, John Glen MP, has made the following statement regarding Human Rights:

“In my view the provisions of The Andrey Lugovoy and Dmitri Kovtun Freezing Order 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Act contains a power for the Treasury to make an Order, if certain conditions are satisfied (section 4). An Order prohibits persons from making funds available to or for the benefit of those persons specified in the freezing order.
- 6.2 In this instance, the Order is made on the basis of reasonable belief that action constituting a threat to the life of Alexander Litvinenko, being a national and resident of the United Kingdom has been taken by persons specified in Article 3 of the Order (cf. s.4(2)(b) of the Act). These persons are judged to be residents of a country or territory outside of the United Kingdom (cf. s.4(3)). The Treasury believe that this Order will be an effective deterrent to prevent similar activities being undertaken again.
- 6.3 The Treasury consulted the Secretary of State, Home Office, in accordance with section 10(5) of the Act.
- 6.4 The Treasury must keep the Order under review, in accordance with s.7 of the Act.
- 6.5 A right of challenge is created under s.63(1)(b) & (2) of the Counter-Terrorism Act 2008. Any person affected by the decision may apply to the High Court or, in Scotland, the Court of Session to set aside the decision.
- 6.6 If the court decides that a decision should be set aside it may make any such order, or give any such relief, as may be made or given in proceedings for judicial review.

7. Policy background

What is being done and why?

- 7.1 The Treasury are using powers available under Part 2 of the Act to make an Order prohibiting persons in the United Kingdom and all persons elsewhere who are nationals of the United Kingdom, or are bodies incorporated under the law of any part of the United Kingdom or are Scottish partnerships, from making funds available to or for the benefit of Andrey Lugovoy and Dmitri Kovtun. The power in the Act gives the United Kingdom the power to take action to freeze assets of overseas persons or governments where there is a threat to the life or property of United Kingdom nationals or residents.
- 7.2 This Order replaces the 2018 Order, made following the publication of the Report into the death of Alexander Litvinenko by the Litvinenko Inquiry chaired by Sir Robert Owen, which expires on 19 January 2020. The report, published on 21st January 2016, found that Mr Litvinenko was deliberately poisoned by Andrey Lugovoy and Dmitri Kovtun in November 2006.
- 7.3 Making this order makes it clear that Parliament will not tolerate activities of this sort, and constitutes a deterrent to these persons and others from undertaking similar activities in the future.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 Not applicable.

10. Consultation outcome

- 10.1 HM Treasury have consulted the Home Secretary in accordance with s.10(5) of the Act. There has been no public consultation. The importance to the safety of UK nationals and residents of this Order means that a public consultation is not appropriate.

11. Guidance

- 11.1 Treasury will notify businesses in the regulated sector of the obligation imposed by paragraph 2 of the Schedule to this Order.
- 11.2 Guidance on asset freezing and other financial sanctions measures is available on HM Treasury's website (<https://www.gov.uk/government/publications/financial-sanctions-uk-freezing-orders>).
- 11.3 The Office of Financial Sanctions Implementation, within HM Treasury, operates a free subscription email service alerting subscribers on changes to the asset freezing regimes, and on other financial sanctions measures. A dedicated telephone line and email address are available for the financial sector and any other persons to submit queries on the asset freezing regime.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is contingent on their respective exposure to the persons specified in the freezing order. Financial institutions are required to have systems in place to implement asset freezes and other financial sanctions. The continued listing of these two names is likely to have negligible impact. To minimise the impact of complying with such restrictions, the Treasury works closely with these organisations, including (but not limited to) the action referred to in the Guidance section above.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been produced for this instrument because no, or no significant, impact on the private, voluntary, or public sector is foreseen.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the Treasury works with all sectors on the requirements for complying with the asset freezing and financial sanctions measures set out in the freezing order.

14. Monitoring & review

- 14.1 The Treasury are obliged to keep the freezing order (and therefore the instrument) under review in accordance with s.7 of the Act. It is therefore not necessary, or appropriate in the circumstances, to make provision for further periodic review as contemplated in ss.28-32 of the Small Business Enterprise and Employment Act 2015.

15. Contact

- 15.1 Office of Financial Sanctions Implementation at HM Treasury Telephone: 020 7270 5454 or email: OFSI@hmtreasury.gov.uk can be contacted with any queries regarding the instrument.

- 15.2 Chris Watts, Deputy Director for Office of Financial Sanctions Implementation, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Economic Secretary to the Treasury, John Glen MP, can confirm that this Explanatory Memorandum meets the required standard.