

2011 No. 750

TERRORISM

The Terrorist Asset-Freezing etc. Act 2010 (Overseas Territories) Order 2011

Made - - - - - *16th March 2011*

Coming into force - - - - - *31st March 2011*

At the Court at Buckingham Palace, the 16th day of March 2011

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by and with the advice of Her Privy Council, in exercise of the power conferred by section 54(1) of the Terrorist Asset-Freezing etc. Act 2010(a), makes the following Order:

Citation and commencement

1. This Order may be cited as the Terrorist Asset-Freezing etc. Act 2010 (Overseas Territories) Order 2011 and shall come into force on 31st March 2011.

Extent and Interpretation

2.—(1) This Order shall extend to the territories listed in Schedule 1.

(2) In the application of this Order to any of the said territories—

- (a) “the Territory” means that territory; and
- (b) any reference to “the Governor” means the Governor or other officer administering the Government of that territory.

Extension of Act to territories

3.—(1) Schedule 2 of this Order sets out Part 1 (including Part 1 of Schedule 2) of the Terrorist Asset-Freezing etc. Act 2010 (the “Act”) as modified in its application to the territories listed in Schedule 1.

(2) In its application to the Sovereign Base Areas of Akrotiri and Dhekelia the Act, shall additionally be subject to the modifications specified in Schedule 3 hereto.

Exercise of powers of the Governor

4. The Governor may, to such extent and subject to such restrictions and conditions as he may think proper, delegate, or authorise the delegation of, any of his powers under this Order to any person, or class or description of persons, approved by him, and references in this Order to the Governor shall be construed accordingly.

Judith Simpson
Clerk of the Privy Council

SCHEDULE 1

Article 2(1)

Anguilla
Bermuda
British Antarctic Territory
British Indian Ocean Territory
Falkland Islands
Montserrat
Pitcairn, Henderson, Ducie and Oeno Islands
St Helena, Ascension and Tristan de Cunha
South Georgia and the South Sandwich Islands
Sovereign Base Areas of Akrotiri and Dhekelia
Turks and Caicos Islands
Virgin Islands

SCHEDULE 2

Article 3(1)

Modifications to be made in the extension of Part 1 of the Terrorist Asset-Freezing etc. Act 2010 to the Territories specified in Schedule 1.

1. For the word “Treasury” wherever it occurs there shall be substituted the word “Governor”.
2. For the words “United Kingdom” wherever they occur there shall be substituted the word “Territory”, except where the words “United Kingdom” are introduced by any of the subsequent modifications.
3. Except for in Schedule 3, for the words “High Court” wherever they occur shall be substituted the words “Supreme Court”.
4. For section 1 substitute—

“In this Part “designated person” means a person designated by the Governor for the purposes of this Part.”
5. For section 2(4) substitute the following sections—
 - “(4) In this section “terrorism” means the use or threat of action where—
 - (a) the action falls within subsection (5),
 - (b) the use or threat is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public, and
 - (c) the use or threat is made for the purpose of advancing a political, religious, racial or ideological cause.
 - (5) Action falls within this subsection if it—
 - (a) involves serious violence against a person;
 - (b) involves serious damage to property;
 - (c) endangers a person’s life, other than that of the person committing the action;

- (d) creates a serious risk to the health or safety of the public or a section of the public;
or
 - (e) is designed seriously to interfere with or seriously to disrupt an electronic system.
- (6) The use or threat of action falling within subsection (5) which involves the use of firearms or explosives is terrorism whether or not subsection 4(b) is satisfied.
- (7) In this section—
- (a) “action” includes action outside the Territory;
 - (b) a reference to any person or to a property is a reference to any person, or to property, wherever situated;
 - (c) a reference to the public includes a reference to the public of a country other than the Territory; and
 - (d) “the government” means the government of the Territory or of a country other than the Territory.
- (8) A reference in subsection (1)(b) above to financial restrictions includes a reference to restrictions relating to economic resources.”

6. In section 6(2), for “(4)” substitute “(8)”.

7. In section 10(7), omit “(in Scotland, the Court of Session)” and “(in Scotland, and interdict)”.

8. In section 16, for section 16(3)(a) substitute “is a benefit paid by the Government of the Territory relating to social security or pensions (irrespective of the name or nature of the benefit), and”.

9. In section 17, sub-section (2) shall be omitted.

10. In section 23(1), substitute—

“(1) The Governor may disclose any information obtained by him in exercise of his powers under this Part (including any document so obtained and any copy or extract made of any document so obtained)—

- (a) to a police officer;
- (b) to any person holding or acting in any office under or in the service of—
 - (i) the Crown in right of the Government of the Territory,
 - (ii) the Crown in right of the Government of the United Kingdom, or the Crown in right of the Scottish Administration, the Northern Ireland Administration or the Welsh Assembly Government,
 - (iii) the States of Jersey, Guernsey or Alderney or the Chief Pleas of Sark,
 - (iv) the Government of the Isle of Man, or
 - (v) the Government of any other British overseas territory;
- (c) to any law officer of the Crown for Jersey, Guernsey or the Isle of Man or any agency with responsibility in the Territory or any other British overseas territory for receiving, requesting, analysing and disseminating disclosures made under the law relating to money laundering or the financing of terrorism;
- (d) to the Legal Services Commission, the Scottish Legal Aid Board or the Northern Ireland Legal Services Commission;
- (e) to the Financial Services Authority, the Jersey Financial Services Commission, the Guernsey Financial Services Commission, the Isle of Man Insurance and Pensions Authority, the Isle of Man Financial Supervision Commission and the relevant authority with responsibility in the Territory or any other British overseas territory for the regulation and supervision of financial services business;
- (f) for the purpose of giving assistance or co-operation, pursuant to the relevant Security Council resolutions, to—

- (i) any organ of the United Nations, or
- (ii) any person in the service of the United Nations, the Council of the European Union, the European Commission or the Government of any country;
- (g) with a view to instituting, or otherwise for the purposes of, any proceedings—
 - (i) in the Territory, for an offence under this Part, or
 - (ii) in the United Kingdom, any of the Channel Islands, the Isle of Man or any other British overseas territory, for an offence under a similar provision in any such jurisdiction; or
- (h) with the consent of a person who, in their own right, is entitled to the information or to possession of the document, copy or extract, to any third party.”

11. In the heading for section 24, omit “UK or international”.

12.—(1) Omit section 25(2).

(2) In section 25(3), for “counsel or solicitor” substitute for “representative”.

(3) In section 25(6), omit “(in Scotland, to confidentiality of communications)”.

13. In section 26(2), omit “or, in Scotland, the Court of Session”.

14. In section 27(2), omit “or, in Scotland, the Court of Session,”

15. Omit section 28.

16. Omit section 29.

17. Omit section 30.

18. Omit section 31.

19.—(1) Omit section 32(3) and (5).

(2) In section 32(1)(b) and section 32(2)(b), for “the relevant maximum” substitute “12 months”.

(3) In section 32(4), for “the relevant maximum” substitute “6 months” and for “level 5 on the standard scale” substitute “statutory maximum”.

20.—(1) In section 33(1), after paragraph (b) insert—

“(c) a body incorporated or constituted under the law of any British overseas territory included in an order made by Her Majesty in Council under section 33(3) of this Act as it has effect in the United Kingdom.”.

(2) Omit section 33(3) and (4).

21. Omit section 35.

22.—(1) Omit section 36(2) and (3)

(2) In section 36(4), omit “(or, Scotland, the Lord Advocate)”.

23. For section 37(1), substitute “No proceedings for an offence under this Act shall be instituted in the Territory except by or with the consent of the Attorney General or other public officer of the Territory having responsibility for criminal proceedings, as appropriate”.

24.—(1) In section 38(2), for “(6)” substitute “(4)”.

(2) In section 38(3), for “England or Wales or Northern Ireland” substitute “the Territory”.

(3) Omit section 38(5) and (6).

25.—(1) In section 41(1), for paragraphs (a) and (b) substitute—

“(a) the person or body responsible for carrying out in the Territory the functions of a monetary authority;

(b) any person who may lawfully accept deposits in or from within the Territory by way of business; or

(ba) any society established lawfully in the Territory whose principle purpose is the making of loans secured on residential property where such loans are funded substantially by its members.”.

(2) For section 41(2), substitute the following sections—

“(2) For the purpose of the definition of “relevant institution” paragraph (1)—

(a) the activity of accepting deposits has the meaning given in any relevant order made under section 22 of the Financial Services and Markets Act 2000; and

(b) a person is not regarded as accepting deposits by way of business if—

(i) he does not hold himself out as accepting deposits on a day to day basis, and

(ii) any deposits which he accepts are accepted only on particular occasions, whether or not involving the issue of securities.

(3) In determining for the purposes of paragraph (2)(b)(ii) whether deposits are accepted only on particular occasions, regard is to be had to the frequency of those occasions and to any characteristics distinguishing them from each other.”

26.—(1) In section 42(1)—

(a) in the definition of “enactment” insert—

(i) in (b)(i) after “an Act” the words “of the United Kingdom Parliament or an Act”;

(ii) after (b)(iii), “(iv) laws made by or under the authority of a legislature in the Territory”

(b) following the definition of “the relevant Security Council resolutions” insert—

““Supreme Court” means the court of the Territory however styled, which possess unlimited original jurisdiction in civil and criminal matters (but does not include a court which has appellate jurisdiction from such a court)”;

(2) After section 42(1) insert—

“42(1A) For the purposes of this Part—

(a) References to conviction on indictment are references to conviction before the Supreme Court (except in the case of the Falklands Islands and South Georgia and South Sandwich Islands where such references are references to conviction before both the Supreme Court of the Magistrates’ Court);

(b) References to summary conviction are references to conviction by a magistrates’ court (except in the case of the Falklands Islands and South Georgia and South Sandwich Islands where such references are references to conviction before both the Magistrates’ Court or the Summary Court);

(c) References to a magistrates’ court are references to a court of the Territory (however styled and however composed) which is subordinate to the Supreme Court and which is authorised by the laws of the Territory to exercise general jurisdiction in criminal matters (but do not include references to a court exercising jurisdiction under a law governing a disciplined force or a penal establishment), and

(d) “the statutory maximum” means the fine prescribed by the law of the Territory, as for the time being in force, as the upper limit of the fines that a magistrates’ court may impose on offenders in respect of any single criminal offences (disregarding any special provision authorising a greater fine to be imposed in respect of any particular offence) or, if the law of the Territory, as so in force, prescribed no such limit, means a fine of such amount (not being excessive in the circumstances of the case) as the court thinks fit.”.

27.—(1) In section 44(3), omit the words “or, in Scotland, the Court of Session”.

(2) Omit section 44(5).

28. Omit section 45.

29.—(1) In section 46(1)—

(a) after “2010” insert “as it has effect in the Territories”;

(b) after “Part” insert “in the Territories”.

(2) In section 46(2), after the first “2010” insert “as it has effect in the Territories”;

(3) In section 46(3), after “2010” insert “as it has effect in the Territories”;

(4) In section 46(4)—

(a) after each references to “the Act of 2010” insert as it has effect in the Territories”;

(b) in section 46(4)(c), for “on 31 December 2010” substitute “for the Territories on 31 March 2011”.

(5) In section 46(5), for “Terrorism (United Nations Measures) Order 2009 (S.I. 2009/1747)” substitute “Terrorism (United Nations Measures) (Overseas Territories) Order 2001 (S.I. 2001/3366)”.

(6) In section 46(6)(a) for “2009” substitute “2001”.

(7) In section 46(7) after reference to “the Act of 2010” insert “as it has effect in the Territories”

(8) In section 46(9) for all the words following “to any offences under” substitute “article 3, 4 or 5 of the Terrorism (United Nations Measures) (Overseas Territories) Order 2001.

(9) Omit section 46(10).

30. Omit section 47.

31. In Schedule 2, Part 1, in the table of repeals and revocations—

(a) for the reference “Terrorism (United Nations Measures) Order 2001 (S.I. 2001/3365)” substitute “The Terrorism (United Nations Measures) (Overseas Territories) Order 2001 (S.I. 2001/3366)”;

(b) omit the entries from “Financial Services and Markers Act 2000 (Consequential Amendments) (No.2) Order 2001 (S.I. 2001/3801)” to the end of the Schedule.

SCHEDULE 3

Article 3(2)

Modifications additionally to be made in the extensions of the Terrorist Asset-Freezing etc. Act 2010 to the Sovereign Base Areas of Akrotiri and Dhekelia.

1. In its application to the Sovereign Base Areas of Akrotiri and Dhekelia, the Act shall additionally be modified as follows:

(1) For the words “High Court” wherever they occur shall be substituted the words “Senior Judges’ Court”;

(2) In section 32(1)(a), omit “on indictment,”;

(3) Omit section 32(1)(b);

(4) In section 32(2)(a), omit “on indictment,”;

(5) Omit section 32(2)(b);

(6) For section 32(4) substitute “A person guilty of an offence under section 19(5) or 22 is liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding €6,000 or to both”.

2. Section 36 shall not apply in relation to the Sovereign Base Areas of Akrotiri and Dhekelia.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order extends Part 1 (including Part 1 of Schedule 2) of the Terrorist Asset-Freezing etc. Act 2010 to the British overseas territories (“the Territories”) specified in Schedule 1, subject to the modifications specified in Schedule 2 of this Order and additionally in Schedule 3 for the Sovereign Base Areas of Akrotiri and Dhekelia.

The Order replaces the existing power that the Territories have to freeze the assets of those suspected of being involved in terrorism under the Terrorism (United Nations Measures) (Overseas Territories) Order 2001 (S.I. 2001/3366) which is vulnerable to being quashed following the Supreme Court decision in *Ahmed & Ors v HM Treasury* [2010] UKSC 2. Applying Part 1 of the 2010 Act to the Territories will give them a similar power to the Treasury’s powers under the Terrorist Asset Freezing etc. Act 2010, allowing them to make asset freezes, licence exemptions, and to require and share information within their own territories.

The United Kingdom has an obligation to provide penalties for offences enforcing Regulation (EC) No. 2580/2001 (OJ No.L344,28.12.2001 p.70). This is provided for in section 1(b) Part 1 of the Asset Freezing etc. Act 2010. The Territories have no such obligation to provide penalties so section 1(b) is not one of the provisions in Part 1 extended to the Territories.

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