Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2011 No. [ ]

CRIMINAL LAW

The Al-Qaida (Asset-Freezing) Regulations 2011

Made - - - - [ ] 2011

Coming into force in accordance with regulation 1(1)

The Treasury are designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to restrictive measures against persons or bodies listed by an international organisation.

In accordance with paragraph 2(2) of Schedule 2 to the European Communities Act 1972, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

These Regulations make provision for a purpose mentioned in section 2(2) of that Act and it appears to the Treasury that it is expedient for any reference to Annex I to Council Regulation(EC) No. 881/2002 of 27 May 2002(**3**) imposing certain specific restrictive measures directed against certain persons and entities associated with the Al-Qaida network to be construed as a reference to that Annex as amended from time to time.

The Treasury, in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972, make the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Al-Qaida (Asset-Freezing) Regulations 2011 and shall come into force on the day after the day on which they are made.

(2) An offence under these Regulations may be committed by conduct wholly or partly outside the United Kingdom by—

(a) a UK national, or

(**1**) S.I. 2010/1834.

(**2**) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and amended by S.I. 2007/1388 and the European Union (Amendment) Act 2008, Schedule, Part 1.

(**3**) OJ No. L 139, 29.05.2002, p.9, as amended by Council Regulation (EC) No. 561/2003 of 27 March 2003 (OJ No. L 82, 29.3.2003, p.1), Council Regulation (EU) No. 1286/2009 of 23 December 2009 (OJ No. L 346, 23.12.2009, p.42) and Council Regulation (EU) No. 754/2011 of 1 August 2011 (OJ No. L 199, 2.8.2011, p. 23). Annex I was most recently amended by Commission Implementing Regulation (EU) No. 960/2011 of 26 September 2011 (OJ No. L 252, 28.9.2011, p.8).

(b) a body incorporated or constituted under the law of any part of the United Kingdom.

(3) In paragraph (2)—

"conduct" includes acts and omissions;

"UK national" means—

(a) a British citizen,

(b) a British overseas territories citizen who acquired their citizenship from a connection with Gibraltar, or

(c) a British subject under Part 4 of the British Nationality Act 1981 (British subjects)(**4**) with the right of abode in the United Kingdom.

Interpretation

2.—(1) In these Regulations—

"the 2000 Act" means the Financial Services and Markets Act 2000(**5**);

"the Council Regulation" means Council Regulation (EC) No. 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al-Qaida network, and a reference to Annex I to that Regulation is to be construed as a reference to that Annex as amended from time to time;

"designated person" means a person, entity, body or group listed in Annex I to the Council Regulation;

"document" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include producing a copy of the information in legible form;

"relevant institution" means—

(a) a person who has permission under Part 4 of the 2000 Act (permission to carry on regulated activities);

(b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to the 2000 Act (EEA passport rights)(**6**) which has permission under paragraph 15 of that Schedule(**7**) as a result of qualifying for authorisation under paragraph 12 of that Schedule(**8**) to accept deposits; or

(c) 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.

(2) The definition of "relevant institution" in paragraph (1) must be read with—

(a) section 22 of the 2000 Act (the classes of activity and categories of investment),

(b) any relevant order under that section(**9**), and

(c) Schedule 2 to that Act (regulated activities).

(3) Any expression used both in these Regulations and in the Council Regulation has the meaning that it bears in the Council Regulation.

(**4**) 1981 c.61. Part 4 was amended by the British Overseas Territories Act 2002 (c.8), section 1(1)(b) and the Nationality, Immigration and Asylum Act 2002 (c.41), sections 15 and 161, Schedule 2, paragraph 1(i) and Schedule 9.
(**5**) 2000 c.8.
(**6**) As amended by S.I. 2006/3221.
(**7**) As amended by the Enterprise Act 2002 (c.40), section 278(1), Schedule 25, paragraphs 40(1) and (19)(a), the Consumer Credit Act 2006 (c.14), section 33(9), and by S.I. 2003/2066 and S.I. 2007/3253.
(**8**) As amended by S.I. 2007/126 and S.I. 2007/3253.
(**9**) S.I. 2001/544 as amended, most recently by S.I. 2011/1613.

Freezing of funds and economic resources

3.—(1) A person ("P") must not deal with funds or economic resources belonging to, or owned, held or controlled by, a designated person if P knows, or has reasonable cause to suspect, that P is dealing with such funds or economic resources.

(2) In paragraph (1) "deal with" means—

(a) in relation to funds—

(i) use, alter, move, allow access to or transfer;

(ii) deal with the funds in any other way that would result in any change of volume, amount, location, ownership, possession, character or destination; or

(iii) make any other change that would enable use, including portfolio management; and

(b) in relation to economic resources, exchange, or use in exchange, for funds, goods or services.

(3) Paragraph (1) is subject to regulation 9.

Making funds available to a designated person

4.—(1) A person ("P") must not make funds available, directly or indirectly, to a designated person if P knows, or has reasonable cause to suspect, that P is making the funds so available.

(2) Paragraph (1) is subject to regulations 8 and 9.

Making funds available for the benefit of a designated person

5.—(1) A person ("P") must not make funds available to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the funds so available.

(2) For the purposes of this regulation—

(a) funds are made available for the benefit of the designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit, and

(b) "financial benefit" includes the discharge of a financial obligation for which the designated person is wholly or partly responsible.

(3) Paragraph (1) is subject to regulations 8 and 9.

Making economic resources available to a designated person

6.—(1) A person ("P") must not make economic resources available, directly or indirectly, to a designated person if P knows, or has reasonable cause to suspect—

(a) that P is making the economic resources so available, and

(b) that the designated person would be likely to exchange the economic resources, or use them in exchange, for funds, goods or services.

(2) Paragraph (1) is subject to regulation 9.

Making economic resources available for the benefit of a designated person

7.—(1) A person ("P") must not make economic resources available to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the economic resources so available.

(2) For the purposes of this regulation—

(a) economic resources are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit, and

(b) "financial benefit" includes the discharge of a financial obligation for which the designated person is wholly or partly responsible.

(3) Paragraph (1) is subject to regulation 9.

Credits to a frozen account

8.—(1) The prohibitions in regulations 4 and 5 are not contravened by a person who credits a frozen account with—

(a) interest or other earnings due on the account, or

(b) payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account.

(2) The prohibitions in regulations 4 and 5 on making funds available do not prevent a relevant institution from crediting a frozen account where it receives funds transferred to the account.

(3) A relevant institution must inform the Treasury without delay if it credits a frozen account in accordance with paragraph (1)(b) or (2).

(4) In this regulation "frozen account" means an account with a relevant institution which is held or controlled (directly or indirectly) by a designated person.

Licences

9.—(1) The prohibitions in regulations 3 to 7 do not apply to anything done under the authority of a licence granted by the Treasury.

(2) A licence must specify the acts authorised by it and may be—

(a) general or granted to a category of persons or to a particular person;

(b) subject to conditions;

(c) of indefinite duration or subject to an expiry date.

(3) The Treasury may vary or revoke a licence at any time.

(4) 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 written notice of the grant, variation or revocation to that person,

(b) in the case of a general licence or a licence granted to a category of persons, take such steps as the Treasury consider appropriate to publicise the grant, variation or revocation of the licence.

(5) A person commits an offence who, for the purposes of obtaining a licence, knowingly or recklessly—

(a) provides information that is false in a material respect, or

(b) provides or produces a document that is not what it purports to be.

(6) A person who purports to act under the authority of a licence but who fails to comply with any conditions included in the licence commits an offence.

Contravention and circumvention of prohibitions

10.—(1) A person who contravenes any of the prohibitions in regulations 3 to 7 commits an offence.

(2) A person commits an offence who intentionally participates in activities knowing that the object or effect of them is (whether directly or indirectly)—

(a) to circumvent any of the prohibitions in regulations 3 to 7, or

(b) to enable or facilitate the contravention of any such prohibition.

Information provisions

11. Schedule 1 (which contains provisions concerning information gathering and disclosure) has effect.

Cooperation with UK or international investigations

12. The Treasury must take such steps as they consider appropriate to cooperate with any investigation, in the United Kingdom or elsewhere, relating to the funds, economic resources or financial transactions of a designated person.

Officers of a body corporate etc.

13.—(1) Where an offence under these Regulations committed by a body corporate—

(a) is committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, or

(b) is attributable to any neglect on the part of any such person,

that person as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1) "director", in relation to a body whose affairs are managed by its members, means a member of the body corporate.

(3) Paragraph (1) also applies in relation to a body that is not a body corporate, with the substitution for the reference to a director of the body of a reference—

(a) in the case of a partnership, to a partner;

(b) in the case of an unincorporated body other than a partnership—

(i) where the body's affairs are managed by its members, to a member of the body;

(ii) in any other case, to a member of the governing body.

Penalties

14.—(1) A person guilty of an offence under regulation 9 or 10 is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;

(b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both.

(2) A person guilty of an offence under paragraph 1(5) or 4(1) of Schedule 1 is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.