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

DRAFT STATUTORY INSTRUMENTS

2010 No.

CRIMINAL LAW

The Al-Qaida and Taliban (Asset-Freezing) Regulations 2010

Made - - - - ***

Coming into force in accordance with regulation 1(1)

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

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.

The Treasury are designated(**2**) for the purposes of section 2(2) of the European Communities Act 1972 in relation to the prevention of terrorist financing.

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 the reference to Annex I of Council Regulation(EC) No. 881/2002 of 27 May 2002(**3**) concerning certain restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, to be construed as a reference to that Annex as amended from time to time.

Citation, commencement and application

1.—(1) These Regulations may be cited as the Al-Qaida and Taliban (Asset-Freezing) Regulations 2010 and come into force on the day after the day on which they are made.

(2) An offence may be committed under these Regulations—

(a) by any person in the United Kingdom; or

(b) by any person elsewhere who is—

(i) a British citizen;

(**1**) 1972 c.68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1)(a) and the European Union (Amendment) Act 2008 (c.7), section 8(1). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006.

(**2**) European Communities (Designation) (No 4) Order 2007 (S.I. 2007/2133).

(**3**) OJ No L 139, 29.05.2002, p.9, as amended by Council Regulation 1286/2009 of 23 December 2009 (OJ No L346, 23.12.2009, p.42). Annex I was most recently amended by Council Regulation 70/2010 of 25 January 2010 (OJ No L20 26.01.2010, p.1).

(ii) a British overseas territories citizen who acquired their citizenship from a connection with Gibraltar;

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

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

Interpretation

2.—(1) In these Regulations—

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

"body corporate" includes a Scottish partnership;

"the Council Regulation" means Council Regulation (EC) No. 881/2002 and references to Annex I of that Regulation are to be construed as references to that Annex as amended from time to time;

"designated person" means a natural or legal person, group or entity 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 references to 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; and

(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.

Freezing funds and economic resources of designated persons

3.—(1) A person must not deal with funds or economic resources belonging to, owned, held, or controlled by a designated person.

(**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 S.I. 2003/2066, S.I. 2007/3253, the Enterprise Act 2002 (c.40), sections 276 and 278(1), Schedule 24, paragraphs 2 to 6, Schedule 25, paragraphs 19(a) and 40(1), and the Consumer Credit Act 2006 (c.14) section 33(9).
(**8**) As amended by S.I. 2007/126 and S.I. 2007/3253.
(**9**) The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) as amended, most recently by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2009 (S.I. 2009/1389).

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

(a) in respect of funds—

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

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

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

(b) in respect of economic resources, exchange or use to obtain funds, goods or services in any way, including (but not limited to) by selling, hiring or mortgaging the resources.

(3) It is an offence for a person to contravene the prohibition in paragraph (1) knowing, or having reasonable cause to suspect, that the funds or economic resources belonged to or were owned, held or controlled by a designated person.

Making funds or economic resources available to a designated person

4.—(1) A person must not make available, directly or indirectly, to or for the benefit of a designated person—

(a) funds; or

(b) economic resources.

(2) It is an offence for a person to contravene the prohibition in paragraph (1)(a) knowing, or having reasonable cause to suspect, that the funds were being made available (directly or indirectly) to or for the benefit of a designated person.

(3) It is an offence for a person to contravene the prohibition in paragraph (1)(b) knowing, or having reasonable cause to suspect—

(a) that the economic resources were being made available (directly or indirectly) to or for the benefit of a designated person; and

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

(4) For the purposes of this regulation—

(a) funds or 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.

Exceptions

5.—(1) It is not an offence under regulation 3 or 4 to credit 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) It is not an offence under regulation 4 for a relevant institution to credit a frozen account where it receives funds transferred to the account.

(3) Regulation 3 applies to any funds credited to a frozen account in accordance with this regulation.

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

Circumventing prohibitions etc.

6. It is an offence for a person to participate knowingly and intentionally in activities the object or effect of which is (directly or indirectly) to—

(a) circumvent a prohibition in regulation 3(1) or 4(1); or

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

Licences

7.—(1) The Treasury may grant a licence to disapply a prohibition in regulation 3(1) or 4(1) in relation to acts specified in the licence.

(2) A licence 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) The Treasury, where they grant, vary or revoke a licence, must—

(a) in the case of a licence granted to a particular person, give written notice of the licence, variation or revocation to that person, and

(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 licence, variation or revocation.

(5) A person commits an offence who, for the purpose 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.

Information provisions

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

Officers of a body corporate etc.

9.—(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 corporate 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

10.—(1) A person guilty of an offence under regulation 3, 4, 6 or 7, or paragraph 5(1)(b) or (d) of Schedule 1 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 2(4) or 5(1)(a) or (c) of Schedule 1 is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

Proceedings

11.—(1) Proceedings against any person for an offence may be taken before the appropriate court in the United Kingdom having jurisdiction in the place where that person is for the time being.

(2) In England and Wales an information relating to an offence that is triable by a magistrates' court may be so tried if it is laid—

(a) before the end of twelve months from the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings came to the prosecutor's knowledge, but

(b) not later than three years from the commission of the offence.

(3) In Scotland—

(a) summary proceedings for an offence may be commenced—

(i) before the end of twelve months from the date on which evidence sufficient in the Lord Advocate's opinion to justify the proceedings came to the Lord Advocate's knowledge, but

(ii) not later than three years from the commission of the offence; and

(b) section 136(3) of the Criminal Procedure (Scotland) Act 1995(**10**) (time limit for certain offences) applies for the purpose of this paragraph as it applies for the purpose of that section.

(4) In Northern Ireland, summary proceedings for an offence may be instituted—

(a) before the end of twelve months from the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings came to the prosecutor's knowledge, but

(b) not later than three years from the commission of the offence.

(5) For the purposes of this regulation—

(a) a certificate signed by or on behalf of the prosecutor or the Lord Advocate as to the date on which such evidence as is referred to in paragraphs (2) to (4) came to the prosecutor's or the Lord Advocate's knowledge is conclusive evidence of that fact, and

(b) a certificate purporting to be so signed is presumed to be so signed unless the contrary is proved.

(**10**) 1995 c.47