

STATES OF JERSEY



TERRORIST ASSET-FREEZING (TEMPORARY PROVISIONS) ACT 2010: EXTENSION OF SECTIONS 1 AND 3 TO JERSEY

**Lodged au Greffe on 29th March 2010
by the Chief Minister**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to signify, pursuant to Article 31 of the States of Jersey Law 2005, whether they agree that Sections 1 and 3 of the Terrorist Asset-Freezing (Temporary Provisions) Act 2010 shall extend to Jersey, so far as they relate to the Terrorism (United Nations Measures) (Channel Islands) Order 2001 (S.I. 2001/3363), so as to be law in Jersey, as summarised in the report of the Chief Minister dated 19th March 2010.

CHIEF MINISTER

REPORT

Summary

1. The purpose of this Proposition is to request the States to consider whether to agree to the extension to Jersey of the provisions of Sections 1 and 3 of the Terrorist Asset-Freezing (Temporary Provisions) Act 2010 (an Act of the United Kingdom Parliament) – as attached (* *see Appendix*).
2. Extension of the legislation will maintain the validity in Jersey of terrorist asset-freezing measures under the existing Terrorism (United Nations Measures) (Channel Islands) Order 2001.
3. The legislation has limited duration, only until 31st December 2010. It is intended that, before that date, primary domestic legislation will be brought to the States for approval, to enact provisions in Jersey law in accordance with the United Nations resolutions on freezing of terrorist assets.

Background

United Nations Security Council Resolution 1373 was adopted on 28th September 2001 and includes a requirement that Member States of the United Nations must –

- (a) prevent the financing of terrorist acts, including the freezing of funds and economic resources of persons who commit or attempt to commit terrorist acts or participate in or facilitate such acts, and
- (b) prohibit their nationals and those within their territories from making funds, financial services or economic resources available to such persons.

Obligations under Resolution 1373 have been implemented in Jersey by the Terrorism (United Nations Measures) (Channel Islands) Order 2001.

United Nations Security Council Resolution 1452 introduced exemptions to prohibitions on making funds, financial assets or economic resources available to permit payments necessary to meet basic humanitarian needs, such as payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, public utility charges and legal fees and expenses) and necessary for extraordinary expenses. These provisions have not yet been enacted in Jersey, although there is a requirement to do so.

Under Section 1 of the of the United Nations Act 1946 (the “UN Act”), there is a power for the UK Treasury to make an Order in Council to give effect to any decision of the UN Security Council where such provision appears “necessary or expedient for enabling those measures to be effectively applied”.

The Terrorism (United Nations Measures) Order 2001 (the “2001 Order”), the Terrorism (United Nations Measures) Order 2006 (the “2006 Order”) and the Terrorism (United Nations Measures) Order 2009 (the “2009 Order”) were made under Section 1 of the UN Act for this purpose (referred to collectively as the “UN Terrorism Orders”).

The 2006 Order replaced and revoked, in the United Kingdom, the 2001 Order on which the Terrorism (United Nations Measures) (Channel Islands) Order 2001 continues to be substantially based.

On 27th January 2010 the United Kingdom Supreme Court handed down a judgment in which it decided that the 2006 Order in the United Kingdom was *ultra vires* the UN Act. On 4th February 2010 the 2006 Order was quashed. The Supreme Court did not rule upon the lawfulness of the 2001 Order or the corresponding Terrorism (United Nations Measures) (Channel Islands) Order 2001, but it is considered these Orders are liable to challenge on the same grounds as the 2006 Order.

The purpose of the Terrorist Asset-Freezing (Temporary Provisions) Act 2010 is to provide for the temporary validity of the UN Terrorism Orders in order to maintain asset-freezing restrictions, whilst the UK Government takes steps to put in place by means of primary legislation an asset-freezing regime to comply with the obligations in Resolution 1373.

Section 1 of the Act also extends, by virtue of Section 3, to the Channel Islands but only to the extent that it maintains the validity of the Terrorism (United Nations Measures) (Channel Islands) Order 2001.

Reason for urgency

It was necessary that the United Kingdom Act should be enacted as a matter of urgency so as to extend to Jersey, even in advance of the consent of the States, for 3 reasons –

- Whilst no funds are presently frozen in Jersey under the Terrorism (United Nations Measures) (Channel Islands) Order 2001, there is a risk that the existing asset-freezing regime is vulnerable to legal challenge, and any assets arising in Jersey that might become subject to restrictions could not be frozen and might be diverted for terrorist purposes.
- If there is any significant period of time when there was no asset-freezing regime in place, new designations by the United Nations of target individuals would not be effected in order to freeze funds should it be necessary to do so.
- As the provisions in the Act relate to the central purpose of imposing financial restrictions for the purposes of preventing terrorism, it is important to maintain equivalent provisions to those in place in the UK to ensure the effectiveness of the regime internationally and to protect the reputation of Jersey's international finance industry.

Sunset clause

The effect of the provisions contained in clause 1 of the Act is expressly limited to 31st December 2010, after which the provisions of the Act will cease to have any effect. The Act does not make any provision for the renewal of the provisions.

It is the intention of Jersey's government to bring forward further primary domestic legislation in relation to the asset-freezing regime for approval by the States before the end of 2010.

Commentary on clauses

Clause 1 – Temporary validity of certain Orders in Council

Subsection (1) specifies that the provisions of clause 1 of the Act have effect for the period beginning when the Act comes into force and ending at midnight on 31st December 2010.

Subsection (2) provides that, during that period, the UN Terrorism Orders are deemed to have been validly made under the UN Act and that every provision of those Orders is deemed to be within the power conferred by section 1 of the UN Act. This ensures the continued validity of the UN Terrorism Orders, notwithstanding the judgment of the Supreme Court and the quashing of the 2006 Order.

Subsection (3) makes clear that as a consequence of *subsection (2)*, all directions which have previously been made or licences previously granted under the UN Terrorism Orders have legal effect. Further directions can be made and licences granted under the authority of those Orders during that period. Finally, this subsection ensures that, during that period, the prohibitions and obligations imposed by those Orders have legal force, and criminal liability may be incurred by a person who fails to comply.

Clause 3 – Short title, commencement and extent

Subsection (1) sets out the short title of the Act, *subsection (2)* provides that the Act comes into force immediately it is passed and *subsection (3)* provides that the Act extends to England and Wales, Scotland and Northern Ireland.

Subsection (4)(a) provides that the Act extends, so far as relating to the Terrorism (United Nations Measures) (Channel Islands) Order 2001, to the Channel Islands, so as to be law respectively in Guernsey and Jersey.

States to signify their view

Article 31(1) of the States of Jersey Law 2005 provides that –

31 Duty to refer certain matters to the States

- (1) *Where it is proposed –*
- (a) *that any provision of a draft Act of the Parliament of the United Kingdom should apply directly to Jersey; or*
 - (b) *that an Order in Council should be made extending to Jersey –*
 - (i) *any provision of an Act of the Parliament of the United Kingdom, or*
 - (ii) *any Measure, pursuant to the Channel Islands (Church Legislation) Measures 1931 and 1957,*

the Chief Minister shall lodge the proposal in order that the States may signify their views on it.

Accordingly, the Chief Minister has lodged the attached Proposition so that the States may signify their view on the matter.

Further legislation

Since the Act is a temporary provision which will expire on 31st December 2010, it is proposed that primary Jersey legislation should be prepared and presented to the States for approval before that date to replace and update the existing measures in Jersey under the Terrorism (United Nations Measures) (Channel Islands) Order 2001, in accordance with Security Council resolutions (UNSCR 1373 and UNSCR 1452).

UNSCR 1373 was adopted on 28th September 2001 and included a requirement that Member States of the United Nations must –

- (a) prevent the financing of terrorist acts, including the freezing of funds and economic resources of persons who commit or attempt to commit terrorist acts or participate in or facilitate such acts, and
- (b) prohibit their nationals and those within their territories from making funds, financial services or economic resources available to such persons.

UNSCR 1452 introduced exemptions to prohibitions on making funds, financial assets or economic resources available, to permit payments necessary to meet basic humanitarian needs, such as payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, public utility charges and legal fees and expenses and necessary for extraordinary expenses.

Jersey is committed in international law to implementing such measures and, furthermore, to ensuring that the relevant measures continue to be in place with regard to the Island's international finance industry.

Financial and manpower implications

Inasmuch as the Terrorist Asset-Freezing (Temporary Provisions) Act 2010 will maintain existing legislation in Jersey, there will be no additional manpower, revenue or capital requirements directly arising.

However, in consequence of the limited duration of the Act (the 'sunset clause') there is a need to introduce primary domestic legislation in Jersey by the end of 2010. This will require the assignment of additional Law Draftsman's Office and Law Officers' Department resources as a priority to enable a new Law to be brought to the States for approval by the end of 2010 in relation to an asset-freezing regime in accordance with UN Security Council Resolution 1373 and Resolution 1452. It is intended that this will be managed as a priority within existing manpower and revenue resources.

19th March 2010



Terrorist Asset-Freezing (Temporary Provisions) Act 2010

CHAPTER 2

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Terrorist Asset-Freezing (Temporary Provisions) Act 2010

2010 CHAPTER 2

An Act to make provision for the temporary validity of certain Orders in Council imposing financial restrictions on, and in relation to, persons suspected of involvement in terrorist activity; and for connected purposes.
[10th February 2010]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Temporary validity of certain Orders in Council

- (1) The following provisions have effect for the period beginning when this Act comes into force and ending with 31 December 2010.
- (2) The following Orders—
 - (a) the Terrorism (United Nations Measures) Order 2001 (S.I. 2001/3365),
 - (b) the Terrorism (United Nations Measures) (Channel Islands) Order 2001 (S.I. 2001/3363), the Terrorism (United Nations Measures) (Isle of Man) Order 2001 (S.I. 2001/3364) and the Terrorism (United Nations Measures) (Overseas Territories) Order 2001 (S.I. 2001/3366),
 - (c) the Terrorism (United Nations Measures) Order 2006 (S.I. 2006/2657), and
 - (d) the Terrorism (United Nations Measures) Order 2009 (S.I. 2009/1747),are deemed to have been validly made under, and every provision of those Orders is deemed to be within the power conferred by, section 1 of the United Nations Act 1946.
- (3) Accordingly, without prejudice to the generality of subsection (2)—
 - (a) the directions made under those Orders have effect, and further directions may be made;

- (b) the licences granted under those Orders have effect, and further licences may be granted;
- (c) the prohibitions and obligations imposed by those Orders have legal force and criminal liability may be incurred by a person who fails to comply.

2 Protection of things done or omitted in interim period

- (1) The following provisions have effect in relation to things done or omitted in the period beginning with 4 February 2010 and ending with the coming into force of this Act.
- (2) Anything done or omitted by a person other than the Treasury that would be valid, lawful or effectual if—
 - (a) the Terrorism (United Nations Measures) Order 2001 (S.I. 2001/3365),
 - (b) the Terrorism (United Nations Measures) Order 2006 (S.I. 2006/2657), and
 - (c) the Terrorism (United Nations Measures) Order 2009 (S.I. 2009/1747),had been validly made under, and every provision of those Orders had been within the power conferred by, section 1 of the United Nations Act 1946, is deemed to be valid, lawful or effectual as if those Orders had been so made and every provision of them had been within that power.
- (3) Subsection (2) applies to an act or omission notwithstanding that it is done or omitted in reliance on or in consequence of something done or omitted by the Treasury (whether during or before the period mentioned in subsection (1)).
- (4) Nothing in this section affects proceedings in respect of anything that is susceptible to legal challenge on a ground independent of the question whether any of those Orders was validly made under, or any of its provisions was within the power conferred by, section 1 of the United Nations Act 1946.
- (5) This section does not—
 - (a) affect any liability of the Treasury in respect of an act or omission that would be unlawful if this section had not been enacted; or
 - (b) give rise to any criminal liability.

3 Short title, commencement and extent

- (1) This Act is the Terrorist Asset-Freezing (Temporary Provisions) Act 2010.
- (2) This Act comes into force immediately it is passed.
- (3) This Act extends to England and Wales, Scotland and Northern Ireland.
- (4) Section 1 and this section also extend—
 - (a) so far as relating to the Terrorism (United Nations Measures) (Channel Islands) Order 2001 (S.I. 2001/3363), to the Channel Islands, so as to be law respectively in Guernsey and Jersey;
 - (b) so far as relating to the Terrorism (United Nations Measures) (Isle of Man) Order 2001 (S.I. 2001/3364), to the Isle of Man, as part of its law;
 - (c) so far as relating to the Terrorism (United Nations Measures) (Overseas Territories) Order 2001 (S.I. 2001/3366), to the territories listed in Schedule 1 to that Order.