

UNOFFICIAL CONSOLIDATION¹
OF
THE TERRORIST ASSET-FREEZING etc. ACT 2010
AND
THE TERRORIST ASSET-FREEZING etc. ACT 2010
(OVERSEAS TERRITORIES) ORDER 2011

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

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

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(1) 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

¹ Unofficial consolidation provided by the Office of the National Anti-Money Laundering Committee.

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".

[sections 1 to 47 of the Terrorist Asset-Freezing etc. Act 2010 are amended by 2011:750 Schedule 2 paragraphs 4 to 31]

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[Omitted]

PART 1

TERRORIST ASSET-FREEZING

CHAPTER 1

DESIGNATED PERSONS

Introductory

1 Meaning of “designated person”

In this Part “designated person” means a person designated by the Governor for the purposes of this Part.

[section 1 amended by 2011:750 Schedule 2 paragraph 1 and paragraph 4 effective 31 March 2011]

Final designations

2 Governor’s power to make final designation

- (1) The Governor may make a final designation of a person for the purposes of this Part if –
 - (a) they reasonably believe –
 - (i) that the person is or has been involved in terrorist activity,
 - (ii) that the person is owned or controlled directly or indirectly by a person within sub-paragraph (i), or
 - (iii) that the person is acting on behalf of or at the direction of a person within sub-paragraph (i), and
 - (b) they consider that it is necessary for purposes connected with protecting members of the public from terrorism that financial restrictions should be applied in relation to the person.
- (2) For this purpose involvement in terrorist activity is any one or more of the following –
 - (a) the commission, preparation or instigation of acts of terrorism;
 - (b) conduct that facilitates the commission, preparation or instigation of such acts, or that is intended to do so;
 - (c) conduct that gives support or assistance to persons who are known or believed by the person concerned to be involved in conduct falling within paragraph (a) or (b) of this subsection.
- (3) It is immaterial whether the acts of terrorism in question are specific acts of terrorism or acts of terrorism generally.
- (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.

[section 2 amended by 2011:750 Schedule 2 paragraph 1, 2, and paragraph 5 effective 31 March 2011]

3 Notification of final designation

- (1) Where the Governor make a final designation of a person, they must—
 - (a) give written notice of the designation to the designated person, and
 - (b) take steps to publicise the designation.
- (2) Unless one or more of the following conditions is met, the Governor must take steps to publicise the designation generally.
- (3) The conditions are that—
 - (a) the Governor believe that the designated person is an individual under the age of 18, or
 - (b) the Governor consider that disclosure of the designation should be restricted—
 - (i) in the interests of national security,
 - (ii) for reasons connected with the prevention or detection of serious crime, or
 - (iii) in the interests of justice.
- (4) If one or more of those conditions is met, the Governor must inform only such persons as they consider appropriate.
- (5) If that ceases to be the case, the Governor must—

- (a) give written notice of that fact to the designated person, and
- (b) take steps to publicise the designation generally.

[section 3 amended by 2011:750 Schedule 2 paragraph 1 effective 31 March 2011]

4 Duration of final designation

- (1) A final designation expires at the end of the period of one year beginning with the date on which it was made, unless it is renewed.
- (2) The Governor may renew a final designation at any time before it expires, if the requirements in section 2(1)(a) and (b) continue to be met.
- (3) A renewed final designation expires at the end of the period of one year beginning with the date on which it was renewed (or last renewed), unless it is renewed again.
- (4) The provisions of section 3 (notification of final designation) apply where a final designation is renewed (or further renewed) as in relation to the original making of a final designation.
- (5) Where a final designation expires the Governor must—
 - (a) give written notice of that fact to the designated person, and
 - (b) take reasonable steps to bring that fact to the attention of the persons informed of the designation.

[section 4 amended by 2011:750 Schedule 2 paragraph 1 effective 31 March 2011]

5 Variation or revocation of final designation

- (1) The Governor may vary or revoke a final designation at any time.
- (2) Where a final designation is varied or revoked the Governor must—
 - (a) give written notice of the variation or revocation to the designated person, and
 - (b) take reasonable steps to bring the variation or revocation to the attention of the persons informed of the designation.

[section 5 amended by 2011:750 Schedule 2 paragraph 1 effective 31 March 2011]

Interim designations

6 Governor's power to make interim designation

- (1) The Governor may make an interim designation of a person for the purposes of this Part if—
 - (a) they reasonably suspect—
 - (i) that the person is or has been involved in terrorist activity,
 - (ii) that the person is owned or controlled directly or indirectly by a person within sub-paragraph (i), or
 - (iii) that the person is acting on behalf of or at the direction of a person within sub-paragraph (i), and
 - (b) they consider that it is necessary for purposes connected with protecting members of the public from terrorism that financial restrictions should be applied in relation to the person.
- (2) Subsections (2) to (8) of section 2 (Governor's power to make final designation: definitions) apply for the purposes of this section as they apply for the

purposes of that section.

- (3) The Governor may not make more than one interim designation of the same person in relation to the same, or substantially the same, evidence.

[section 6 amended by 2011:750 Schedule 2 paragraph 1 and 6 effective 31 March 2011]

7 Notification of interim designation

- (1) Where the Governor make an interim designation of a person, they must—
 - (a) give written notice of the designation to the designated person, and
 - (b) take steps to publicise the designation.
- (2) Unless one or more of the following conditions is met, the Governor must take steps to publicise the designation generally.
- (3) The conditions are that—
 - (a) the Governor believe that the designated person is an individual under the age of 18, or
 - (b) the Governor consider that disclosure of the designation should be restricted—
 - (i) in the interests of national security,
 - (ii) for reasons connected with the prevention or detection of serious crime, or
 - (iii) in the interests of justice.
- (4) If one or more of those conditions is met, the Governor must inform only such persons as they consider appropriate.
- (5) If that ceases to be the case, the Governor must—
 - (a) give written notice of that fact to the designated person, and
 - (b) take steps to publicise the designation generally.

[section 7 amended by 2011:750 Schedule 2 paragraph 1 effective 31 March 2011]

8 Duration of interim designation

- (1) An interim designation expires—
 - (a) at the end of the period of 30 days beginning with the date on which it was made, or
 - (b) on the making of a final designation in relation to the same person, whichever is the earlier.
- (2) Where an interim designation expires the Governor must—
 - (a) give written notice of that fact to the designated person, and
 - (b) take reasonable steps to bring that fact to the attention of the persons informed of the designation.
- (3) Where an interim designation expires on the making of a final designation in relation to the same person—
 - (a) a notice under subsection (2) above may be combined with a notice under section 3(1)(a), and
 - (b) steps under subsection (2) above may be combined with steps under section 3 to publicise the final designation.

[section 8 amended by 2011:750 Schedule 2 paragraph 1 effective 31 March 2011]

9 Variation or revocation of interim designation

- (1) The Governor may vary or revoke an interim designation at any time.
- (2) Where an interim designation is varied or revoked the Governor must—
 - (a) give written notice of the variation or revocation to the designated person, and
 - (b) take reasonable steps to bring the variation or revocation to the attention of the persons informed of the designation.

[section 9 amended by 2011:750 Schedule 2 paragraph 1 effective 31 March 2011]

Confidential information

10 Confidential information

- (1) Where the Governor in accordance with section 3(4) or 7(4) inform only certain persons of a designation, they may specify that information contained in it is to be treated as confidential.
- (2) A person (“P”) who—
 - (a) is provided with information that is to be treated as confidential in accordance with subsection (1), or
 - (b) obtains such information,must not, subject to subsection (3), disclose it if P knows, or has reasonable cause to suspect, that the information is to be treated as confidential.
- (3) The prohibition in subsection (2) does not apply to any disclosure made by P with lawful authority.
- (4) For this purpose information is disclosed with lawful authority only if and to the extent that—
 - (a) the disclosure is by, or is authorised by, the Governor,
 - (b) the disclosure is by or with the consent of the designated person,
 - (c) the disclosure is necessary to give effect to a requirement imposed under or by virtue of this Part or any other enactment, or
 - (d) the disclosure is required, under rules of court, tribunal rules or a court or tribunal order, for the purposes of legal proceedings of any description.
- (5) This section does not prevent the disclosure of information that is already, or has previously been, available to the public from other sources.
- (6) A person who contravenes the prohibition in subsection (2) commits an offence.
- (7) The Supreme Court may, on the application of—
 - (a) the person who is the subject of the information, or
 - (b) the Governor,grant an injunction to prevent a breach of the prohibition in subsection (2).

[section 10 amended by 2011:750 Schedule 2 paragraph 1,3 and 7 effective 31 March 2011]

CHAPTER 2

PROHIBITIONS IN RELATION TO DESIGNATED PERSONS

Prohibitions

11 Freezing of funds and economic resources

- (1) A person ("P") must not deal with funds or economic resources 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 subsection (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 in volume, amount, location, ownership, possession, character or destination, or
 - (iii) make any other change that would enable use, including portfolio management;
 - (b) in relation to economic resources, exchange or use in exchange for funds, goods or services.
- (3) Subsection (1) is subject to sections 16 and 17 (exceptions and licences).
- (4) A person who contravenes the prohibition in subsection (1) commits an offence.

12 Making funds or financial services available to designated person

- (1) A person ("P") must not make funds or financial services available (directly or indirectly) to a designated person if P knows, or has reasonable cause to suspect, that P is making the funds or financial services so available.
- (2) Subsection (1) is subject to sections 16 and 17 (exceptions and licences).
- (3) A person who contravenes the prohibition in subsection (1) commits an offence.

13 Making funds or financial services available for benefit of designated person

- (1) A person ("P") must not make funds or financial services 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 or financial services so available.
- (2) For the purposes of this section—
 - (a) funds 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) Subsection (1) is subject to sections 16 and 17 (exceptions and licences).
- (4) A person who contravenes the prohibition in subsection (1) commits an offence.

14 Making economic resources available to designated person

- (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) Subsection (1) is subject to section 17 (licences).
- (3) A person who contravenes the prohibition in subsection (1) commits an offence.

15 Making economic resources available for benefit of designated person

- (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 section –
 - (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) Subsection (1) is subject to section 17 (licences).
- (4) A person who contravenes the prohibition in subsection (1) commits an offence.

Exceptions and licences

16 Exceptions

- (1) The prohibitions in sections 11 to 13 are not contravened by a relevant institution crediting 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 sections 12 and 13 on making funds available do not prevent a relevant institution from crediting a frozen account where it receives funds transferred to the account.
- (3) The prohibition in section 13 is not contravened by the making of a payment which –
 - (a) 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
 - (b) is made to a person who is not a designated person, whether or not the payment is made in respect of a designated person.
- (4) A relevant institution must inform the Governor without delay if it credits a frozen account in accordance with subsection (1)(b) or (2).
- (5) In this section “frozen account” means an account with a relevant institution

which is held or controlled (directly or indirectly) by a designated person.

[section 16 amended by 2011:750 Schedule 2 paragraphs 1, 2, and 8 effective 31 March 2011]

17 Licences

- (1) The prohibitions in sections 11 to 15 do not apply to anything done under the authority of a licence granted by the Governor.
- (2) [Omitted].
- (3) 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.
- (4) The Governor may vary or revoke a licence at any time.
- (5) On the grant, variation or revocation of a licence, the Governor 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 Governor consider appropriate to publicise the grant, variation or revocation of the licence.
- (6) 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.
- (7) 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.

[section 17 amended by 2011:750 Schedule 2 paragraph 1 and 9 effective 31 March 2011]

Circumventing prohibitions etc.

18 Circumventing prohibitions etc.

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 sections 11 to 15, or
- (b) to enable or facilitate the contravention of any such prohibition.

CHAPTER 3

INFORMATION

Information for Governor

19 Reporting obligations of relevant institutions

- (1) A relevant institution must inform the Governor as soon as practicable if—
 - (a) it knows, or has reasonable cause to suspect, that a person—
 - (i) is a designated person, or

- (ii) has committed an offence under any provision of Chapter 2 (prohibitions in relation to designated persons), and
 - (b) the information or other matter on which the knowledge or suspicion is based came to it in the course of carrying on its business.
- (2) Where a relevant institution informs the Governor under subsection (1), it must state—
 - (a) the information or other matter on which the knowledge or suspicion is based, and
 - (b) any information it holds about the person by which the person can be identified.
- (3) Subsection (4) applies if—
 - (a) a relevant institution informs the Governor under subsection (1) that it knows, or has reasonable cause to suspect, that a person is a designated person, and
 - (b) that person is a customer of the institution.
- (4) The relevant institution must also state the nature and amount or quantity of any funds or economic resources held by it for the customer at the time when it first had the knowledge or suspicion.
- (5) A relevant institution that fails to comply with any requirement of subsection (1), (2) or (4) commits an offence.

[section 19 amended by 2011:750 Schedule 2 paragraph 1 effective 31 March 2011]

20 Powers to request information

- (1) The Governor may request a designated person to provide information concerning—
 - (a) funds or economic resources owned, held or controlled by or on behalf of the designated person, or
 - (b) any disposal of such funds or economic resources.
- (2) The Governor may request a designated person to provide such information as the Governor may reasonably require about expenditure—
 - (a) by or on behalf of the designated person, or
 - (b) for the benefit of the designated person.
- (3) The power in subsection (1) or (2) is exercisable only where the Governor believe that it is necessary for the purpose of monitoring compliance with or detecting evasion of this Part.
- (4) The Governor may request a person acting under a licence granted under section 17 to provide information concerning—
 - (a) funds or economic resources dealt with under the licence, or
 - (b) funds, economic resources or financial services made available under the licence.
- (5) The Governor may request any person in or resident in the Territory to provide such information as the Governor may reasonably require for the purpose of—
 - (a) establishing for the purposes of this Part—
 - (i) the nature and amount or quantity of any funds or economic resources owned, held or controlled by or on behalf of a

- designated person,
 - (ii) the nature and amount or quantity of any funds, economic resources or financial services made available directly or indirectly to, or for the benefit of, a designated person, or
 - (iii) the nature of any financial transactions entered into by a designated person,
 - (b) monitoring compliance with or detecting evasion of this Part, or
 - (c) obtaining evidence of the commission of an offence under this Part.
- (6) The Governor may specify the manner in which, and the period within which, information is to be provided.
 - (7) If no such period is specified, the information which has been requested must be provided within a reasonable time.
 - (8) A request may include a continuing obligation to keep the Governor informed as circumstances change, or on such regular basis as the Governor may specify.
 - (9) Information requested under this section may relate to any period of time during which a person is, or was, a designated person.
 - (10) Information requested under subsection (1)(b), (2) or (5)(a)(iii) may relate to any period of time before a person became a designated person (as well as, or instead of, any subsequent period of time).

[section 20 amended by 2011:750 Schedule 2 paragraph 1 and 2 effective 31 March 2011]

21 Production of documents

- (1) A request under section 20 may include a request to produce specified documents or documents of a specified description.
- (2) Where the Governor request that documents be produced, they may –
 - (a) take copies of or extracts from any document so produced,
 - (b) request any person producing a document to give an explanation of it, and
 - (c) where that person is a body corporate, partnership or unincorporated body other than a partnership, request any person who is –
 - (i) in the case of a partnership, a present or past partner or employee of the partnership,
 - (ii) in any other case, a present or past officer or employee of the body concerned,
 to give such an explanation.
- (3) Where the Governor request a designated person or a person acting under a licence granted under section 17 to produce documents, that person must –
 - (a) take reasonable steps to obtain the documents (if not already in the person's possession or control);
 - (b) keep the documents under the person's possession or control (except for the purpose of providing them to the Governor or as the Governor may otherwise permit).

[section 21 amended by 2011:750 Schedule 2 paragraph 1 effective 31 March 2011]

22 Failure to comply with request for information

- (1) A person commits an offence who –

- (a) without reasonable excuse refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made under this Chapter,
 - (b) knowingly or recklessly gives any information, or produces any document, which is false in a material particular in response to such a request,
 - (c) with intent to evade the provisions of this Chapter, destroys, mutilates, defaces, conceals or removes any document, or
 - (d) otherwise intentionally obstructs the Governor in the exercise of their powers under this Chapter.
- (2) Where a person is convicted of an offence under this section, the court may make an order requiring that person, within such period as may be specified in the order, to comply with the request.

[section 22 amended by 2011:750 Schedule 2 paragraph 1 effective 31 March 2011]

Disclosure of information by Governor

23 General power to disclose information

- (1) The Governor may disclose any information obtained by them in exercise of their 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.

- (2) In subsection (1)(h) “in their own right” means not merely in the capacity as a servant or agent of another person.

[section 23 amended by 2011:750 Schedule 2 paragraph 10 effective 31 March 2011]

Other

24 Co-operation with investigations

The Governor must take such steps as they consider appropriate to co-operate with any investigation, in the Territory or elsewhere, relating to the funds, economic resources or financial transactions of a designated person.

[section 24 amended by 2011:750 Schedule 2 paragraphs 1, 2, and 11 effective 31 March 2011]

25 Application of provisions

- (1) Nothing done under this Chapter is to be treated as a breach of any restriction imposed by statute or otherwise.
- (2) *[Omitted]*.
- (3) Nothing in this Chapter is to be read as requiring a person who has acted as representative for any person to disclose any privileged information in their possession in that capacity.
- (4) This Chapter does not limit the circumstances in which information may be disclosed apart from this Chapter.
- (5) This Chapter does not limit the powers of the Governor to impose conditions in connection with the discharge of their functions under section 17 (licences).
- (6) In this section—
 - “information” includes documents;
 - “privileged information” means information with respect to which a claim to legal professional privilege could be maintained in legal proceedings.

[section 25 amended by 2011:750 Schedule 2 paragraph 1 and 12 effective 31 March 2011]

CHAPTER 4

SUPPLEMENTARY PROVISIONS

Supervision of exercise of powers

26 Appeal to the court in relation to designations

- (1) This section applies to any decision of the Governor –
 - (a) to make or vary an interim or final designation of a person,
 - (b) to renew a final designation of a person, or
 - (c) not to vary or revoke an interim or final designation of a person.
- (2) The designated person concerned may appeal against any such decision to the Supreme Court.
- (3) On such an appeal, the court may make such order as it considers appropriate.
- (4) The making of an appeal under this section does not suspend the effect of the decision to which the appeal relates.

[section 26 amended by 2011:750 Schedule 2 paragraph 1, 3 and 13 effective 31 March 2011]

27 Review of other decisions by the court

- (1) This section applies to any decision of the Governor in connection with their functions under this Part other than a decision to which section 26 applies (appeal to the court in relation to designations).
- (2) Any person affected by a decision to which this section applies may apply to the Supreme Court for the decision to be set aside.
- (3) In determining whether the decision should be set aside, the court must apply the principles applicable on an application for judicial review.
- (4) 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.

[section 27 amended by 2011:750 Schedule 2 paragraph 1, 3 and 14 effective 31 March 2011]

28 Appeals and reviews: supplementary

[Omitted by 2011:750 Schedule 2 paragraph 15 effective 31 March 2011]

29 Initial exercise of powers to make rule of court

[Omitted by 2011:750 Schedule 2 paragraph 16 effective 31 March 2011]

30 Treasury report on operation of Part 1

[Omitted by 2011:750 Schedule 2 paragraph 17 effective 31 March 2011]

31 Independent review of operation of Part 1

[Omitted by 2011:750 Schedule 2 paragraph 18 effective 31 March 2011]

Offences

32 Penalties

- (1) A person guilty of an offence under section 11, 12, 13, 14, 15 or 18 is liable –
 - (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine or to both;
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both.
- (2) A person guilty of an offence under section 10 or 17 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 12 months or to a fine not exceeding the statutory maximum or to both.
- (3) *[Omitted]*.
- (4) A person guilty of an offence under section 19(5) or 22 is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding statutory maximum or to both.
- (5) *[Omitted]*.

[section 32 amended by 2011:750 Schedule 2 paragraph 19 effective 31 March 2011]

33 Extra-territorial application of offences

- (1) An offence under this Part may be committed by conduct wholly or partly outside the Territory by –
- (a) a UK national, or
 - (b) a body incorporated or constituted under the law of any part of the Territory.
 - (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) In subsection (1) “UK national” means –
- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
 - (b) a person who under the British Nationality Act 1981 is a British subject, or
 - (c) a British protected person within the meaning of that Act.
- (3) *[Omitted]*.
- (4) *[Omitted]*.
- (5) In this section “conduct” includes acts and omissions.
- (6) Nothing in this section affects any criminal liability arising otherwise than under this section.

[section 33 amended by 2011:750 Schedule 2 paragraphs 2 and 20 effective 31 March 2011]

34 Liability of officers of body corporate etc.

- (1) Where an offence under this Part 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 subsection (1) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.
- (3) Subsection (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.

35 Jurisdiction to try offences

[Omitted by 2011:750 Schedule 2 paragraph 21 effective 31 March 2011]

36 Time limit for proceedings for summary offences

- (1) In England and Wales an information relating to an offence under section 19(5) or 22 may be tried by a magistrates' court if it is laid –
 - (a) at any time within three years after the commission of the offence, and
 - (b) within twelve months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the knowledge of the prosecutor.
- (2) *[Omitted].*
- (3) *[Omitted].*
- (4) For the purposes of this section a certificate of the prosecutor as to the date on which such evidence as is referred to above came to their notice is conclusive evidence.

[section 36 amended by 2011:750 Schedule 2 paragraph 22 effective 31 March 2011]

37 Consent to prosecution

- (1) 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.
- (2) Nothing in subsection (1) prevents –
 - (a) the arrest of a person in respect of an offence under this Part, or
 - (b) the remand in custody or on bail of a person charged with such an offence.

[section 37 amended by 2011:750 Schedule 2 paragraph 23 effective 31 March 2011]

38 Procedure for offences by unincorporated bodies

- (1) A fine imposed on an unincorporated body on its conviction of an offence under this Part must be paid out of the funds of the body.
- (2) Subsections (3) to (4) apply if it is alleged that an offence under this Part has been committed by an unincorporated body (as opposed to by a member of the body).
- (3) Proceedings in the Territory for such an offence must be brought in the name of the body.
- (4) For the purposes of such proceedings –
 - (a) any rules of court relating to the service of documents have effect as if the body were a body corporate, and
 - (b) the following provisions apply as they apply in relation to a body corporate –

- (i) in England and Wales, section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates' Courts Act 1980;
- (ii) in Northern Ireland, section 18 of the Criminal Justice Act (Northern Ireland) 1945 and Article 166 of, and Schedule 4 to, the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I.26)).

(5) [Omitted].

(6) [Omitted].

[section 38 amended by 2011:750 Schedule 2 paragraph 24 effective 31 March 2011]

Interpretation

39 Meaning of “funds” and “economic resources”

- (1) In this Part, “funds” means financial assets and benefits of every kind, including (but not limited to) –
 - (a) cash, cheques, claims on money, drafts, money orders and other payment instruments;
 - (b) deposits with relevant institutions or other persons, balances on accounts, debts and debt obligations;
 - (c) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivative products;
 - (d) interest, dividends and other income on or value accruing from or generated by assets;
 - (e) credit, rights of set-off, guarantees, performance bonds and other financial commitments;
 - (f) letters of credit, bills of lading and bills of sale;
 - (g) documents providing evidence of an interest in funds or financial resources;
 - (h) any other instrument of export financing.

- (2) In this Part, “economic resources” means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services.

40 Meaning of “financial services”

- (1) In this Part, “financial services” means any service of a financial nature, including (but not limited to) –
 - (a) insurance-related services consisting of –
 - (i) direct life assurance;
 - (ii) direct insurance other than life assurance;
 - (iii) reinsurance and retrocession;
 - (iv) insurance intermediation, such as brokerage and agency;
 - (v) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;
 - (b) banking and other financial services consisting of –
 - (i) accepting deposits and other repayable funds;
 - (ii) lending (including consumer credit, mortgage credit, factoring and financing of commercial transactions);

- (iii) financial leasing;
 - (iv) payment and money transmission services (including credit, charge and debit cards, travellers' cheques and bankers' drafts);
 - (v) providing guarantees or commitments;
 - (vi) financial trading (as defined in subsection (2) below);
 - (vii) participating in issues of any kind of securities (including underwriting and placement as an agent, whether publicly or privately) and providing services related to such issues;
 - (viii) money brokering;
 - (ix) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
 - (x) settlement and clearing services for financial assets (including securities, derivative products and other negotiable instruments);
 - (xi) providing or transferring financial information, and financial data processing or related software (but only by suppliers of other financial services);
 - (xii) providing advisory and other auxiliary financial services in respect of any activity listed in sub-paragraphs (i) to (xi) (including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy).
- (2) In subsection (1)(b)(vi), "financial trading" means trading for own account or for account of customers, whether on an investment exchange, in an over-the-counter market or otherwise, in –
- (a) money market instruments (including cheques, bills and certificates of deposit);
 - (b) foreign exchange;
 - (c) derivative products (including futures and options);
 - (d) exchange rate and interest rate instruments (including products such as swaps and forward rate agreements);
 - (e) transferable securities;
 - (f) other negotiable instruments and financial assets (including bullion).

41 Meaning of "relevant institution"

- (1) In this Part "relevant institution" means-
- (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.
 - (c) an undertaking that by way of business –
 - (i) operates a currency exchange office,
 - (ii) transmits money (or any representation of monetary value) by any means, or
 - (iii) cashes cheques that are made payable to customers.
- (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.

[section 41 amended by 2011:750 Schedule 2 paragraph 25 effective 31 March 2011]

42 Interpretation: general

- (1) In this Part –
- “designated person” has the meaning given by section 1;
 - “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;
 - “economic resources” has the meaning given by section 39(2);
 - “enactment” includes –
 - (a) an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978);
 - (b) an enactment comprised in, or in an instrument made under –
 - (i) an Act of the United Kingdom Parliament or an Act of the Scottish Parliament;
 - (ii) Northern Ireland legislation; or
 - (iii) a Measure or Act of the National Assembly for Wales;
 - (iv) laws made by or under the authority of a legislature in the Territory.
 - “final designation” means a designation under section 2 (including any renewed such designation);
 - “financial services” has the meaning given by section 40;
 - “funds” has the meaning given by section 39(1);
 - “interim designation” means a designation under section 6;
 - “relevant institution” has the meaning given by section 41;
 - “the relevant Security Council resolutions” has the meaning given by subsection (2) below;
 - “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).
- (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.
- (2) For the purposes of this Part "the relevant Security Council resolutions" are –
- (a) resolution 1373 (2001) adopted by the Security Council of the United Nations on 28th September 2001, and
 - (b) resolution 1452 (2002) adopted by the Security Council of the United Nations on 20th December 2002.
- (3) The Governor may by order amend subsection (2) so as to add further relevant Security Council resolutions or remove any that are superseded.
- (4) Any such order must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

[section 42 amended by 2011:750 Schedule 2 paragraphs 1 and 26 effective 31 March 2011]

Miscellaneous

43 Service of notices

- (1) This section applies in relation to any notice to be given to a person by the Governor under this Part.
- (2) Any such notice may be given –
 - (a) by posting it to the person's last known address, or
 - (b) where the person is a body corporate, partnership or unincorporated body other than a partnership, by posting it to the registered or principal office of the body or partnership concerned.
- (3) Where the Governor do not have an address for the person, they must make arrangements for the notice to be given to the person at the first available opportunity.

[section 43 amended by 2011:750 Schedule 2 paragraph 1 effective 31 March 2011]

44 Crown application

- (1) This Part binds the Crown.
- (2) No contravention by the Crown of a provision of this Part makes the Crown criminally liable.
- (3) The Supreme Court may, on the application of a person appearing to the court to have an interest, declare unlawful any act or omission of the Crown that constitutes a contravention of a provision of this Part.
- (4) Nothing in this section affects Her Majesty in her private capacity.
- (5) *[Omitted]*.

[section 44 amended by 2011:750 Schedule 2 paragraph 3 and 27 effective 31 March 2011]

45 Consequential amendments, repeals and revocations

[Omitted by 2011:750 Schedule 2 paragraph 28 effective 31 March 2011]

46 Transitional provisions and savings

- (1) The Terrorist Asset-Freezing (Temporary Provisions) Act 2010 as it has effect in the Territories ceases to have effect on the coming into force of this Part in the Territories.
- (2) The repeal by this Part of the Act of 2010 as it has effect in the Territories does not affect the continued validity, lawfulness or effectualness of anything that—
 - (a) was done or omitted by a person other than the Governor in the period beginning with 4 February 2010 and ending with the coming into force of the Act of 2010, and
 - (b) was valid, lawful or effectual by virtue of section 2 of that Act (protection of things done or omitted in interim period).
- (3) Subsection (2) is without prejudice to the operation of section 16 of the Interpretation Act 1978 (general savings) in relation to the repeal by this Part of the Act of 2010 as it has effect in the Territories.
- (4) In its application to the repeal by this Part of section 1 of the Act of 2010 as it has effect in the Territories (temporary validity of certain Orders in Council), section 16(1) of the Act of 1978 has effect as if—
 - (a) references to anything done, suffered, acquired, accrued or incurred under section 1 of the Act of 2010 as it has effect in the Territories included references to anything done, suffered, acquired, accrued or incurred under any Order deemed by that section to have been validly made,
 - (b) the reference to any offence committed against that enactment were a reference to any offence committed against any such Order, and
 - (c) at the end there were inserted “and as if the enactment had not been due to cease to have effect for the Territories on 31 March 2011”.
- (5) Anything done or omitted to be done by the Governor under the Terrorism (United Nations Measures) (Overseas Territories) Order 2001 ([S.I. 2001/3366](#)) is, if in force or effective immediately before the coming into force of this Part, to have effect as if done or omitted by the Governor under any corresponding provision of this Part so far as that is required for continuing its effect on and after the coming into force of this Part.
- (6) In particular—

- (a) any direction made, licence granted, or request for information or documents, by the Governor under the Order of 2001 that is in force immediately before the coming into force of this Part has effect, on or after the coming into force of this Part, as a final designation, a licence or (as the case may be) a request under any corresponding provision of this Part so far as that is required for continuing its effect on and after the coming into force of this Part, and
 - (b) any information obtained by the Governor under that Order (including any document so obtained and any copy or extract made of any document so obtained) is to be treated for the purposes of section 23 (general power to disclose information) as obtained by the Governor under this Part.
- (7) Subsections (5) and (6) have effect despite the fact that (following the repeal of the Act of 2010 as it has effect in the Territories) the Order concerned is not validly made under, or that any provision of it is not within the power conferred by, section 1 of the United Nations Act 1946.
- (8) Any final designation that has effect by virtue of subsections (5) and (6) ceases to have effect at the end of the period of three months after this Part comes into force unless renewed (or revoked) by the Governor under this Part.
- (9) The references to offences under this Part in the new sub-paragraphs inserted by way of substitution by Part 1 of Schedule 1 are to be read as including references to any offences under article 3, 4 or 5 of the Terrorism (United Nations Measures) (Overseas Territories) Order 2001.
- (10) *[Omitted]*.

[section 46 amended by 2011:750 Schedule 2 paragraph 1 and 29 effective 31 March 2011]

47 Power to repeal Part

[Omitted by 2011:750 Schedule 2 paragraph 30 effective 31 March 2011]

PART 2

TERRORIST FINANCING, MONEY LAUNDERING ETC.

Directions in particular cases

48 Directions to branches of credit institutions and financial institutions

[Omitted as 2011:750 only extends Part 1 (including Part 1 of Schedule 2) of the Terrorist Asset-Freezing etc. Act 2010]

49 Directions in relation to subsidiaries

[Omitted as 2011:750 only extends Part 1 (including Part 1 of Schedule 2) of the Terrorist Asset-Freezing etc. Act 2010]

General directions and other requirements

50 Circumventing requirements of Schedule 7 directions

[Omitted as 2011:750 only extends Part 1 (including Part 1 of Schedule 2) of the Terrorist Asset-Freezing etc. Act 2010]

Minor amendments and repeals

51 Northern Ireland credit unions

[Omitted as 2011:750 only extends Part 1 (including Part 1 of Schedule 2) of the Terrorist Asset-Freezing etc. Act 2010]

52 Consequential amendments and repeals

[Omitted as 2011:750 only extends Part 1 (including Part 1 of Schedule 2) of the Terrorist Asset-Freezing etc. Act 2010]

PART 3

FINAL PROVISIONS

Extent etc.

53 Extent

[Omitted as 2011:750 only extends Part 1 (including Part 1 of Schedule 2) of the Terrorist Asset-Freezing etc. Act 2010]

54 Channel Islands, Isle of Man and British overseas territories

[Omitted as 2011:750 only extends Part 1 (including Part 1 of Schedule 2) of the Terrorist Asset-Freezing etc. Act 2010]

Commencement and short title

55 Commencement

[Omitted as 2011:750 only extends Part 1 (including Part 1 of Schedule 2) of the Terrorist Asset-Freezing etc. Act 2010]

56 Short title

[Omitted as 2011:750 only extends Part 1 (including Part 1 of Schedule 2) of the Terrorist Asset-Freezing etc. Act 2010]

SCHEDULES

SCHEDULE 1

Sections 45(1) and 52(1)

CONSEQUENTIAL AMENDMENTS

[Omitted as 2011:750 only extends Part 1 (including Part 1 of Schedule 2) of the Terrorist Asset-Freezing etc. Act 2010]

SCHEDULE 2

Sections 45(2) and 52(2)

REPEALS AND REVOCATIONS

PART 1

TERRORIST ASSET-FREEZING

<i>Reference</i>	<i>Extent of repeal or revocation</i>
The Terrorism (United Nations Measures) (Overseas Territories) Order 2001 (S.I. 2001/3366)	The whole instrument

[Schedule 2 amended by 2011:750 Schedule 2 paragraph 31 effective 31 March 2011]