

STATES OF JERSEY



DRAFT TERRORIST ASSET-FREEZING (AMENDMENT OF LAW) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 10th February 2015
by the Minister for External Relations**

STATES GREFFE



Jersey

DRAFT TERRORIST ASSET-FREEZING (AMENDMENT OF LAW) (JERSEY) REGULATIONS 201-

REPORT

Background

The Terrorist Asset-Freezing (Jersey) Law 2011 (“TAFJL”) was introduced to address perceived weaknesses in Jersey’s measures to prevent the potential financing of terrorism. Those concerns arose indirectly from the UK Supreme Court judgment in the case of *H.M. Treasury v. Ahmed* (2010), declaring the Terrorism (United Nations Measures) Order 2006 and Article 3(1)(b) of the Al-Qaida and Taliban (United Nations Measures) Order 2006 to be *ultra vires*. Consequently it has been proposed, in due course, to seek revocation of the Al-Qaida and Taliban (United Nations Measures – Channel Islands) Order 2002.

The TAFJL requires that the assets of a designated person or entity must be frozen. ‘Freezing’ means that no person may deal in any way with funds or economic resources which are, or are suspected to be, owned, held or controlled by a designated person.

For the purposes of the TAFJL, a ‘designated person’ is –

- (a) A person designated by the Minister for External Relations because the Minister considers it is necessary to protect the public from terrorism and reasonably suspects or believes the person is or has been involved in terrorist activity, or is acting on behalf of such a person;
- (b) A person designated under the UK Terrorist Asset-Freezing, etc. Act 2010;
- (c) A person included in the list published in accordance with Council Regulation (EC) No 2580/2001 on specific restrictive measures against certain persons and entities with a view to combating terrorism.

Issues

Amendments to the TAFJL are proposed to address 2 issues:

1. Definition of funds ‘owned, held or controlled’ by a person

The Council of Europe¹ Moneyval mutual assessment review of Jersey’s financial services regulation took place from 18th – 24th January 2015. Following the

¹ The Council of Europe is the international organisation founded in 1949, promoting co-operation between all countries of Europe in the areas of legal standards, human rights, democratic development, the rule of law and cultural co-operation.

assessment, the review team has provided preliminary findings for consideration by the Jersey authorities.

Amongst a number of positive observations on the implementation of terrorist asset-freezing legislation, the preliminary findings included a recommendation that the relevant terrorist legislation should expressly extend the definition of funds subject to freezing to cover assets ‘jointly’ or ‘indirectly’ owned, held or controlled by the relevant persons.

2. Implementation of UN Security Council terrorist listings

Jersey is included as a territory to which the United Kingdom’s ratification of the United Nations Charter (1945) applies, and is thereby obliged to implement UN Security Council Resolutions to the extent that these fall within the domestic competence of Jersey.

The UN Security Council has, by Resolutions (“UNSCR”) 1373 (2001), UNSCR 1267 (1999) and subsequent Resolutions including UNSCR 1988 (2011) and 1989 (2011), established Committees responsible for the listing of individuals and entities linked with Al-Qaida and the Taliban and other terrorist organisations.

The United Kingdom, and other members of the European Union, comply with their UN terrorism sanctions obligations by the implementation of EU restrictive measures –

- Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, which implements UNSCR 1373 (2001);
- 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, which implements UNSCRs 1267 (1999), 1373 (2001) and 1989 (2011); and
- Council Regulation (EU) No 753/2011 of 1 August 2011 concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan, which implements UNSCRs 1267 (1999) and 1988 (2011).

The TAFJL includes asset-freezing measures, *inter alia*, in respect of any person designated by Council Regulation (EC) No 2580/2001.

In addition, in accordance with the common external relations policy of the Council of Ministers, the Minister for External Relations has introduced legislation to give effect to the designation of individuals and entities under EU restrictive measures 881/2002 and 753/2011.

However, due to the legislative process involved in drafting and approving an EU Regulation, there is frequently a delay of several days or longer between the UN Sanctions Committee listing and the EU designation of a person or entity. As a result, there is a risk of ‘asset flight’, i.e. if the listed person or entity is able to remove the relevant assets from the EU or Jersey before the necessary legislation can be brought into force.

Proposed amendments

The proposed amendments to the TAFJL would –

- (1) Clarify the interpretation of ‘ownership’ or ‘control’ of funds, so that the terms would explicitly include any funds that were jointly or co-owned, or indirectly owned, or controlled by a designated person. The purpose of this

change would be to eliminate any potential uncertainty regarding the extent of assets that must be frozen under the TAFJL.

The proposed amendment would clarify the range of assets that must be frozen under Article 13, and also clarify the extent of assets on which information must be disclosed to the Minister under Article 22 of the TAFJL.

- (2) Amend the description of a 'designated person', so that it included a person who has been listed by a United Nations Sanctions Committee established in pursuance of UNSCRs 1373 (2001), UNSCR 1267 (1999), UNSCR 1988 (2011) or 1989 (2011). This change would affect an asset freeze in Jersey immediately that a person or entity is listed by the relevant UN terrorist Sanctions Committee, prior to any EU Regulation and without the need for further Jersey asset-freezing legislation.

Financial and manpower implications

There are no financial or manpower implications for the States arising from these draft Regulations.

Explanatory Note

These Regulations amend the Terrorist Asset-Freezing (Jersey) Law 2011 (the “Law”).

Regulation 1 amends Article 2 of the Law to extend the meaning of designated person to a natural or legal person, group or entity listed by the Committee established pursuant to resolution 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities, the Committee established pursuant to resolution 1988 (2011), or the Counter Terrorism Committee established pursuant to Security Council resolution 1373 (2001). The Committees referred to are all established by the United Nations Security Council.

Regulation 2 amends Article 4 of the Law to provide that the fact that funds or economic resources are owned held or controlled by a designated person jointly with another person or otherwise shall not prevent those funds being treated as being owned, held or controlled by the designated person for the purposes of Article 13 (which prohibits a person from dealing with funds or economic resources owned, held or controlled by a designated person) or Article 22 (which enables the Minister to require a person to provide information concerning funds or economic resources owned, held or controlled by, or on behalf of, the designated person). Regulation 2 also amends Article 4 of the Law to provide that a reference in the Law to funds or economic resources being “owned, held or controlled” by a designated person includes a reference to them being owned, held or controlled directly or indirectly. By new Article 4(5), the words “owned”, “held”, “controlled”, “directly” and “indirectly” when used in the Law are to have the same meaning they have in Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combatting terrorism (as that Regulation is amended from time to time); and they are to be interpreted in the manner specified in Article 3 of the European Union (Jersey) Law 1973.

Regulation 3 gives the title of these Regulations and provides for them to come into force on the day after they are made.



Jersey

DRAFT TERRORIST ASSET-FREEZING (AMENDMENT OF LAW) (JERSEY) REGULATIONS 201-

Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Article 40 of the Terrorist Asset-Freezing (Jersey) Law 2011¹, have made the following Regulations –

1 Article 2 amended

In Article 2 of the Terrorist Asset-Freezing (Jersey) Law 2011² –

- (a) the word “or” at the end of paragraph (b) shall be deleted; and
- (b) at the end of paragraph (c) there shall be added the word “or” and following paragraph –

“(d) a natural or legal person, group or entity –

- (i) listed on the Al-Qaida Sanctions List maintained and amended from time to time by the Committee established pursuant to resolution 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities,
- (ii) listed on a list maintained and amended from time to time by the Committee established pursuant to resolution 1988 (2011) as being associated with the Taliban, or
- (iii) listed on a list maintained and amended from time to time by the Counter Terrorism Committee established pursuant to resolution 1373 (2001),

such Committees being established by the United Nations Security Council.”.

2 Article 4 amended

In Article 4 of the Terrorist Asset-Freezing (Jersey) Law 2011 –

- (1) in the heading for the words “ ‘funds’ and ‘economic resources’ ” there shall be substituted the words “ ‘funds’, ‘economic resources’, ‘owned’, ‘held’ and ‘controlled’ ”.

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- (2) after paragraph (2) there shall be added the following paragraphs –
- “(3) The fact that funds or economic resources are owned, held or controlled by a designated person jointly with another person or otherwise does not prevent those funds being treated as being owned, held or controlled by the designated person for the purposes of Article 13 or Article 22.
 - (4) A reference in Article 13 or 22 to funds or economic resources being ‘owned, held or controlled’ by a designated person includes a reference to them being owned, held or controlled directly or indirectly.
 - (5) In this Law –
 - (a) the words ‘owned’, ‘held’, ‘controlled’, ‘directly’ and ‘indirectly’ have the same meaning as they have in Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combatting terrorism (as that Regulation is amended from time to time); and
 - (b) Article 3 of the European Union (Jersey) Law 1973 applies to any question as to the meaning or effect of those words, as that Article applies to such a question in relation to a provision that has effect in Jersey by virtue of the arrangements described in Article 3(1) of that Law.”.

3 Citation and commencement

These Regulations may be cited as the Terrorist Asset-Freezing (Amendment of Law) (Jersey) Regulations 201- and shall come into force the day after they are made.

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- ¹ *chapter 17.861*
² *chapter 17.861*