



# Terrorist Asset-Freezing Bill (HL) 2010-11

Bill No 102 2010-11

RESEARCH PAPER 10/70 10 November 2010

The United Kingdom is required by the UN to freeze the assets of persons who commit terrorist acts. In a case that raised “fundamental questions about the relationship between Parliament and the executive” the UK legislation that allowed the Treasury to freeze the assets of those suspected of involvement in terrorism was quashed by the UK Supreme Court in January 2010. The legislation was re-instated by temporary legislation immediately afterwards, but the *Terrorist Asset-Freezing (Temporary Provisions) Act 2010* expires on 31 December 2010. This Bill seeks to replace that Act with a permanent legislative framework.

The Bill’s Second Reading in the House of Commons is scheduled for 15 November 2010

Ben Smith

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## Research Paper 10/70

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## Summary

On 27 January 2010 the Supreme Court announced that it had upheld the appeal in the case of *HM Treasury v Ahmed and Others*. This concerned the UK's implementation of United Nations obligations to freeze the assets of terrorists by way of two Orders in Council made under section 1 of the *United Nations Act 1946*. The Orders gave effect to UN Security Council Resolutions requiring States to freeze the assets of those who commit terrorist acts.

The Court quashed the *Terrorism (United Nations Measures) Order 2006* and provisions in the *Al-Qaida and Taliban (United Nations Measures) Order 2006* because it considered that both exceeded the powers granted by their parent Act, the *United Nations Act 1946*. At the same time, the Supreme Court indicated that the *Terrorism (United Nations Measures) Order 2009*, which had replaced the 2006 Order of the same name, was also liable to be quashed for similar reasons; the earlier Order continued in force only for existing designations made under it.

The Government responded by passing by the fast-track procedure the *Terrorist Asset-Freezing (Temporary Provisions) Act 2010*, which received Royal Assent on 10 February 2010. The Act simply asserted the validity of the *Terrorism (United Nations Measures) Order 2009* and related Orders. The provisions of the *Terrorist Asset-Freezing (Temporary Provisions) Act* expire on 31 December 2010.

On 8 March 2010 the Government published a consultation paper on permanent legislation. Although there were some changes in the draft Bill published with the consultation paper, which were intended to strengthen the safeguards against human rights abuses, some respondents did not feel that these went far enough. Some respondents in the financial sector, which would be required to participate in the asset-freezing regime, thought that the requirements on financial services companies were unclear and burdensome.

On 15 July 2010, the *Terrorist Asset-Freezing Etc. Bill 2010-11* was presented in the House of Lords. In a change from the *Terrorism (United Nations Measures) Order 2006*, it placed on a statutory basis the existing practice whereby the Government makes quarterly reports to Parliament, and requiring the Government to appoint an independent reviewer of the legislation. The provisions of the Bill, however, are largely based on those of the Order. The al-Qaeda Order was replaced by regulations under the *European Communities Act 1972*.

The Bill would also amend schedule 7 of the Counter-Terrorism Act 2008, which provides the Treasury with powers to impose financial restrictions in relation to persons connected with a country of concern in relation to money-laundering, terrorist financing or the development of weapons of mass destruction.

Also addressed by the Bill is the judgment of the European Court of Justice on the benefits paid to spouses of designated persons under Council Regulation (EC) 881/2002. In response to the judgment, the Government announced on 15 July 2010 that it would no longer treat spouses' benefits as covered by the asset-freezing regime.

At Committee Stage in the House of Lords, the Government tabled important amendments to the Bill, which went some way to addressing continuing concerns about the protection of civil liberties. The Government raised the legal threshold from "reasonable suspicion" to "reasonable belief" for final designations, and created a new, interim designation, to last for a maximum of 30 days, where the lower legal threshold of "reasonable suspicion" would still apply. Secondly, amendments were made so that challenges to Treasury designations would be heard by the courts under an appeal rather than a judicial review procedure. According to the Government, this would ensure a robust, in-depth review of decisions by the courts.

## 1 Introduction

On 27 January 2010 the Supreme Court announced that it had upheld the appeal in the case of *HM Treasury v Ahmed and Others*, which concerned the UK's implementation of United Nations obligations to freeze the assets of terrorists by way of two Orders in Council made under section 1 of the *United Nations Act 1946*. The Orders had been made to give effect to United Nations Security Council Resolutions requiring States to freeze the assets of those suspected of supporting terrorism.

The Court quashed the *Terrorism (United Nations Measures) Order 2006* and provisions in the *Al-Qaida and Taliban (United Nations Measures) Order 2006* because it considered that both exceeded the powers granted by their parent Act, the *United Nations Act 1946*. At the same time, the Supreme Court made it clear in its judgment that the *Terrorism (United Nations Measures) Order 2009*, which had replaced the 2006 Order except in as much as the earlier Order continued in force for existing designations made under it, was also liable to be quashed for similar reasons.

On receiving the judgment, the Government quickly announced its intention to introduce primary legislation to re-instate the asset-freezing regime. The *Terrorist Asset Freezing (Temporary Provisions) Bill* was published on 5 February, was debated on 8 February, and received its Royal Assent on 10 February 2010, under the fast-track legislative procedure.<sup>1</sup> The temporary provisions Bill simply nullified the effect of the Supreme Court judgment by setting down in primary legislation that the Orders which had been quashed should be:

...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.<sup>2</sup>

Clearly, such a solution could only be temporary, as the title of the Act made clear, and, shortly after the passage of the temporary provisions Act, the then Government announced in a Written Statement that it had published a consultation paper on the introduction of more permanent legislation that would establish the asset-freezing regime in primary legislation.<sup>3</sup> The consultation paper included a draft of the Bill,<sup>4</sup> and the closing date for consultation was 18 June 2010.

The draft bill as published in the consultation paper was largely based on the 2009 Order but there were some differences. One was the placing on a statutory basis of the quarterly reports that the Treasury presently makes to Parliament on the operation of the regime.

Another new feature is the requirement for the Treasury to appoint someone to carry out an independent review of the operation of the Act. This would ensure that Parliament has impartial information on the asset-freezing regime, in addition to the information which is provided in the Treasury's quarterly reports. Other changes clarified the legal basis for designating a person under the legislation and alleviate slightly the restrictions on third parties.

Despite these changes, some commentators have said that the courts could still find the proposed legislation to be incompatible with human rights. The Bill has also been called into question in view of the Coalition Government's undertaking to review the existing 'patchwork' of anti-terrorism legislation, many of the provisions of which are controversial.

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<sup>1</sup> For more information about this procedure, see the Library Standard Note [Fast-track legislation](#), SN/PC/05256, 22 December 2009

<sup>2</sup> [Terrorist Asset-Freezing \(Temporary Provisions\) Act 2010](#), Cap. 2, s. 2 (2)

<sup>3</sup> HC Deb 8 March 2010, c1-3WS

<sup>4</sup> HM Treasury, [Public Consultation on the draft Terrorist Asset-Freezing Bill](#), 18 March 2010

## 2 The United Nations' anti-terrorist measures

### 2.1 Background

There has been a series of UN Security Council Resolutions (SCRs) demanding that states should take action, including asset-freezing, against terrorism. Until the 1990s these Resolutions involved sanctions and controls on transactions between states. The 1999 attacks on the US embassies in Kenya and Tanzania increased the urgency of action to prevent such attacks, and suggested that Resolutions concerning state actions alone were not enough and that international action against individuals or specific organisations was necessary. The attacks on 11 September 2001 further increased the urgency of international action.

### 2.2 Security Council Resolutions<sup>5</sup>

In response to the attacks on 9/11, the UN Security Council passed a further set of Resolutions requiring States to take greater steps to freeze the assets of those involved in international terrorism, and specifically Osama bin Laden, the Taliban and their associates.

SCR 1267 (1999) on the situation in Afghanistan provided for the freezing of funds and other financial resources derived from or generated from property owned or controlled by the Taliban or by any undertaking owned or controlled by them.<sup>6</sup> It also provided for a centralised list of persons and entities to whom the restrictions should apply, to be decided by a committee of the Security Council, consisting of all its members.<sup>7</sup>

SCR 1333 (2000) on the situation in Afghanistan took this process a step further.<sup>8</sup> It provided by paragraph 8(c) that all states should freeze funds and other financial assets of Osama bin Laden and individuals and entities associated with him to ensure that no funds were made available for the benefit of any person or entity associated with him, including the al-Qaeda organisation.

On 28 September 2001, the Security Council broadened its approach to the problem still further. It decided that action required to be taken against everyone who committed or attempted to commit terrorist acts or facilitated their commission. It adopted SCR 1373 (2001) on threats to international peace and security caused by terrorist acts.<sup>9</sup> The preamble to this Resolution recognised the need for states to complement international co-operation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism. In paragraph 1, it states that the Security Council has decided that States shall:

“(a) Prevent and suppress the financing of terrorist acts; (b) Criminalize the wilful provision or collection ... of funds by their nationals or in their territories with the intention that the funds should be used ... to carry out terrorist acts; (c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled ... by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities...; [and] (d) Prohibit their nationals or any persons and entities within their territories from making funds, financial assets or economic resources or financial or other related services

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<sup>5</sup> Analysis in this section is based largely on the Supreme Court judgment [2010] UKSC 2, paras 17-22

<sup>6</sup> UN SCR 1267 (1999), para 4(b). See the appendices for full text of the resolutions

<sup>7</sup> For the list associated with SCR 1267, see *The Consolidated List established and maintained by the 1267 Committee with respect to Al-Qaida, Usama bin Laden, and the Taliban and other individuals, groups, undertakings and entities associated with them.* (Last updated 4 November 2010)

<sup>8</sup> UN SCR 1333 (2000)

<sup>9</sup> UN SCR 1373 (2001)

available ... for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled ... by such persons and of persons and entities acting on behalf of or at the direction of such persons.”<sup>10</sup>

Unlike SCR 1267 (1999), SCR 1373 (2001) does not provide for a centralised list of persons and entities to which Resolution 1373 applies. The Security Council left states to determine for themselves who such persons and entities are. A further series of Resolutions requiring action against terrorism followed. According to the *Scotsman* newspaper, more than 50 people living in Britain are believed to be on the United Kingdom’s sanctions list.<sup>11</sup>

SCR 1822 (2008) was the most recent of these Resolutions at the time of the appeal in question. Its preamble declared that terrorism in all its forms and manifestations constitutes one of the most serious threats to peace and security and stressed that terrorism could only be defeated by a sustained and comprehensive approach involving the active collaboration of all states. In paragraph 1 it required States to take all the measures previously imposed by previous Resolutions with respect to al-Qaeda, Osama bin Laden and the Taliban

...and other individuals, groups, undertakings and entities associated with them, as referred to in the list created pursuant to Resolutions 1267 (1999) and 1333 (2000) (the ‘Consolidated List’), including,

(a) Freeze without delay the funds and other financial assets or economic resources of these individuals, groups, undertakings and entities, including funds derived from property owned or controlled directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly for such persons’ benefit, or by their nationals or by persons within their territory.<sup>12</sup>

It was followed and reaffirmed by SCR 1904 (2009), which was adopted on 17 December 2009.

### 3 The Financial Action Task Force recommendations

The Financial Action Task Force (FATF) is an inter-governmental body, hosted by the OECD, that coordinates action to strengthen the international financial system against crime. It was established in July 1989 by a Group of Seven Summit in Paris, initially to examine and develop measures to combat money-laundering. In 2001, the FATF expanded its mandate to include efforts to combat terrorist financing. The task force sets out standards, which comprise forty recommendations on money laundering and nine special recommendations on terrorist financing.

The UK Government has cited the FATF standards as a justification for its approach to terrorist asset-freezing. The organisation’s recommendation on terrorist asset-freezing are based on the UN Resolution but go further:

Special Recommendation III: Freezing and confiscating terrorist assets

Each country should implement measures to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organisations in accordance with the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts.

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<sup>10</sup> [UN SCR 1373 \(2001\)](#), Para 1

<sup>11</sup> ‘Supreme Court rules freezing bank accounts of terror suspects is illegal’, *Scotsman*, 28 January 2010

<sup>12</sup> [UN SCR 1822 \(2008\)](#), Para 1



Each country should also adopt and implement measures, including legislative ones, which would enable the competent authorities to seize and confiscate property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations.

The organisation goes on to explain the objectives of the recommendation as both punitive and preventive:

The objective of the first requirement is to freeze terrorist-related funds or other assets based on reasonable grounds, or a reasonable basis, to suspect or believe that such funds or other assets could be used to finance terrorist activity. The objective of the second requirement is to deprive terrorists of these funds or other assets if and when links have been adequately established between the funds or other assets and terrorists or terrorist activity. The intent of the first objective is preventative, while the intent of the second objective is mainly preventative and punitive. Both requirements are necessary to deprive terrorists and terrorist networks of the means to conduct future terrorist activity and maintain their infrastructure and operations.

Note the wording in the last paragraph: “based on reasonable grounds, or a reasonable basis, to **suspect or believe that such funds or other assets could be used** to finance terrorist activity.” This wording clearly widens the definition of those to be susceptible to designation for asset-freezing in comparison with the wording in UN Resolution 1373, which calls on states to freeze “funds and other financial assets or economic resources of **persons who commit, or attempt to commit, terrorist acts.**”

Perhaps controversially, the FATF describes the recommendation as conferring “obligations” and says that they “require” jurisdictions to take certain measures. Commentators have criticised the Government for its defence of the asset-freezing regime by reference to the recommendations of the FATF when, unlike UN Resolutions, the recommendations of the FATF are just that and have no legal force. In its March 2010 consultation paper, the Treasury said:

In July 2007 the FATF’s evaluation of the UK asset freezing regime assessed it to be fully compliant with international standards, the first country to be awarded this top mark.<sup>13</sup>

One academic has argued that, in any case, the use of the FATF and structures designed to combat money-laundering does not necessarily lead to a suitable framework for dealing with terrorist finances.<sup>14</sup>

#### 4 The UK’s terrorist asset-freezing orders

The UK gave effect to the UN Resolutions by a series of Orders in Council made under the *United Nations Act 1947*. These required no parliamentary scrutiny.

The *Terrorism (United Nations Measures) Order 2006* was made to give effect to SCR 1373 (2001) and SCR 1452 (2002).<sup>15</sup> It gave the treasury the power to designate persons suspected of involvement in terrorist activity. Those designated had no access to their money in bank accounts or to any other benefits, except enough for basic living expenses and these would have to be specifically licensed by the Treasury.

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<sup>13</sup> HM Treasury, *Public consultation: draft terrorist asset-freezing bill*, Cm 7852, March 2010, p11

<sup>14</sup> Michael Levi, “Combating the financing of terrorism”, *British Journal of Criminology* (2010) 50, pp650-69

<sup>15</sup> The *Terrorism (United Nations Measures) Order 2006* (SI 2006/2657)

The Order repealed a similar previous Order dated 2001. The 2006 Order is the relevant Order for the purposes of the Supreme Court case, although it has now been replaced by the *Terrorism (United Nations Measures) Order 2009* (SI 2009/1747), which came into force on 10 August 2009. Like the 2001 and 2006 Terrorism Orders, the 2009 Order was made under Section 1 of the 1946 Act to give effect to SCR 1373 (2001) and other SCRs. It revoked the two similar previous Orders.<sup>16</sup>

In response to Security Council Resolution 1452 (2002) and others instructing states to take action against al-Qaeda, the Taliban and Osama bin Laden, the Treasury made the *Al-Qaida and Taliban (United Nations Measures) Order 2006* (this revoked a similar Order from 2002).<sup>17</sup> This Order implements sanctions on a list, maintained by the UN, of individuals and entities belonging or related to the Taliban, Osama Bin Laden and al-Qaeda.

Subsequent to the hearing in this case, the Treasury revoked the designations of the appellants under the *Terrorism (United Nations Measures) Order 2006* and issued new designations under the terms of the *Terrorism (United Nations Measures) Order 2009*.

The Government undertook in 2006 to make quarterly reports to Parliament on the operation of the counter-terrorism asset freezing regime. The reports give the number of asset-freezing designations made during the period, reviews and de-listings, licenses issued (whereby listed persons are allowed to make or receive payments under controlled circumstances) and the amount of money frozen under the regime. The latest such report was given to Parliament in July 2010.<sup>18</sup>

### **Powers under which the Orders were made**

The Supreme Court pointed to a number of pieces of anti-terrorist legislation through which the UK Government had set up an asset-freezing regime. Part 2 of the *Anti-terrorism, Crime and Security Act 2001* (the 2001 Act) provides for such a regime,<sup>19</sup> which the Supreme Court described as non-onerous and attended by reasonable safeguards.<sup>20</sup> The *Counter-Terrorism Act 2008* introduced a procedure for setting aside financial restrictions decisions taken by the Treasury, but this procedure was not available to the appellants in this case.

Instead of using the powers specifically designed for the purpose by the 2001 Act, the Treasury made a series of Orders under to Section 1 of the *United Nations Act 1946* (the 1946 Act), which gives a general authorisation to Ministers for the making of such Orders in Council as are 'necessary or expedient' to give effect to Security Council Resolutions.<sup>21</sup> Had the 2001 Act been used, the resulting system would have been less onerous system and one with a mechanism for setting designations aside.

## **5 The legal challenge**

The case of *Ahmed v HM Treasury*, brought by individuals who had been subjected to asset freezes under the 2006 Orders, was heard in High Court in 2008<sup>22</sup> and the Appeal Court in October 2008.<sup>23</sup> On 5 October 2009, the case was heard in the Supreme Court; the case was

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<sup>16</sup> *Terrorism (United Nations Measures) Order 2001* (SI 2001/3365); *Terrorism (United Nations Measures) Order 2006* (SI 2006/2657)

<sup>17</sup> *Al-Qa'ida and Taliban (United Nations Measures) Order 2002* (SI 2002/11). Full list of the UNSCRs implemented by the Order is given in the Explanatory Note at the end of the Order

<sup>18</sup> HC Deb 26 July 2010, c109-10WS

<sup>19</sup> *Anti-terrorism, Crime and Security Act 2001*, Part 2

<sup>20</sup> Judgment in [2010] UKSC 2, para 51

<sup>21</sup> *United Nations Act 1946*, Section 1(1)

<sup>22</sup> *Ahmed v HM Treasury*, [2008] EWHC 869 (Admin)

<sup>23</sup> *Ahmed v HM Treasury*, [2008] EWCA Civ 1187

deliberately chosen as the Supreme Court's first because of its constitutional significance. Lord Phillips, President of the Supreme Court, said:

It is particularly appropriate that these should be the first appeals to be heard in the Supreme Court of the United Kingdom, for they concern the separation of powers.<sup>24</sup>

The questions for the Supreme Court were:

Both Orders

1. Are the Orders ultra vires the 1946 Act by reference to the principle of legality?
2. Are the Orders incompatible with the Convention rights under the Human Rights Act 1998?

The TO [*Terrorism (United Nations Measures) Order 2006*]

3. If it is not ultra vires on one or other of the previous grounds, is the TO ultra vires the 1946 Act because its terms go beyond those required by the SCR?

The AQO [*Al-Qaida and Taliban (United Nations Measures) Order 2006*]

4. Is the AQO ultra vires the 1946 Act because it violates the right of effective judicial review?<sup>25</sup>

## 5.1 The Supreme Court finds that the Government exceeded its powers

On 27 January 2010, the Supreme Court announced its judgment:<sup>26</sup>

The Supreme Court has unanimously held that the TO [*Terrorism (United Nations Measures) Order 2006*] should be quashed as ultra vires s.1(1) of the 1946 Act. It also held by a majority of six to one (Lord Brown dissenting) that Article 3(1)(b) of the AQO [*Al-Qaida and Taliban (United Nations Measures) Order 2006*] must also be quashed as ultra vires. It was noted that if the designations in respect of A, K, M and G imposed subsequent to the hearing pursuant to the TO 2009 had been before the Supreme Court these too would have been quashed.<sup>27</sup>

One reason for the Court to be particularly vigilant over the severe restrictions imposed by the Orders was the fact that the *United Nations Act 1946* allows Orders in Council to be made without any Parliamentary scrutiny. Having studied the legislative history of the 1946 Act, the Court concluded that Parliament had not intended the 1946 Act to be used to introduce coercive measures which interfere with UK citizens' basic rights.

Giving the leading judgment, Lord Hope said that the Orders:

...lie wholly outside the scope of Parliamentary scrutiny. This raises fundamental questions about

“Ultra vires” is a Latin term which essentially means “beyond the powers”. The *Oxford Dictionary of Law* says that it usually describes an act by a public authority, company, or other body “that goes beyond the limits of powers conferred on it”.

<sup>24</sup> [UK Supreme Court blog](#), 2 February 2010

<sup>25</sup> *Ahmed v HM Treasury* [2010] UKSC 2, para 41

<sup>26</sup> *Ahmed v HM Treasury* [2010] UKSC 2, 27 January 2010

<sup>27</sup> Supreme Court, [Press summary](#), 27 January 2010.

the relationship between Parliament and the executive and about judicial control over the power of the executive.<sup>28</sup>

Lord Hope went on:

The consequences of the Orders that were made in this case are so drastic and so oppressive that we must be just as alert to see that the coercive action that the Treasury have taken really is within the powers that the [*United Nations Act 1946*] has given them. Even in the face of the threat of international terrorism, the safety of the people is not the supreme law. We must be just as careful to guard against unrestrained encroachments on personal liberty.<sup>29</sup>

Lord Hope also criticised the use of “reasonable suspicion” as the legal threshold for designation:

SCR 1373(2001) is not phrased in terms of reasonable suspicion. It refers instead to persons ‘who commit, or attempt to commit, terrorist acts’. The preamble refers to ‘acts of terrorism’. The standard of proof is not addressed. The question how persons falling within the ambit of the decision are to be identified is left to the member states. Transposition of the direction into domestic law under section 1 of the 1946 Act raises questions of judgment as to what is ‘necessary’ on the one hand and what is ‘expedient’ on the other. It was not necessary to introduce the reasonable suspicion test in order to reproduce what the SCR requires. It may well have been expedient to do so, to ease the process of identifying those who should be restricted in their access to funds or economic resources. But widening the scope of the Order in this way was not just a drafting exercise. It was bound to have a very real impact on the people that were exposed to the restrictions as a result of it.<sup>30</sup>

Commenting on the necessity of implementing Security Council Resolutions, Lord Hope said:

...these resolutions are the product of a body of which the executive is a member as the United Kingdom's representative. Conferring an unlimited discretion on the executive as to how those resolutions, which it has a hand in making, are to be implemented seems to me to be wholly unacceptable. It conflicts with the basic rules that lie at the heart of our democracy.<sup>31</sup>

The judgment also pointed out that other states did not find it necessary to give unlimited powers to the executive in order to give effect to Security Council Resolutions:

The regimes that both Australia and New Zealand have introduced by means of primary legislation are exacting. But they contain various, albeit limited, safeguards and in so far as they interfere with basic rights of the individual that interference has been expressly authorised by their respective legislatures.<sup>32</sup>

Both Australia and New Zealand initially implemented asset-freezing regimes under their respective United Nations Acts, but later replaced these regimes with ones based on primary legislation.<sup>33</sup>

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<sup>28</sup> HM Treasury v Ahmed [2010] UKSC 2, para 5

<sup>29</sup> *Ibid.*, para 6

<sup>30</sup> *Ibid.*, para 58

<sup>31</sup> *Ibid.*, para 45

<sup>32</sup> *Ibid.*, para 50

<sup>33</sup> Further information about Australia's system can be found at the Australian Government web page [Australia's Implementation of United Nations Security Council Financial Sanctions](#)

Lord Mance questioned the wisdom of anti-terrorist legislation being built up by a series of executive Orders, resulting in a patchwork:

One can certainly feel concern about the development and continuation over the years of a patchwork of over-lapping anti-terrorism measures, some receiving Parliamentary scrutiny, others simply the result of executive action...

It may well be thought desirable that such measures should be debated in Parliament alongside the primary legislation which Parliament did enact, and correspondingly undesirable that there should be developed and continued, as a result of executive Orders, a patchwork of measures that have and have not been debated in Parliament.<sup>34</sup>

## 5.2 The Terrorism (United Nations Measures) Order 2006- level of proof

The relevant Security Council Resolutions did not address the question of the level of proof required for imposing asset freezes. The judgment concluded that in the use of a 'reasonable suspicion' test to identify those whose assets are to be frozen, the Treasury had exceeded the powers granted to it by the *United Nations Act 1946*, and that the measures were therefore unlawful. It explained:

The absence of any indication that Parliament had the imposition of restrictions on the freedom of individuals in mind when the provisions of the 1946 Act were being debated makes it impossible to say that it squarely confronted those effects and was willing to accept the political cost when that measure was enacted.<sup>35</sup>

The Supreme Court came to a unanimous verdict on the first Order.

## 5.3 Al-Qaida and Taliban (United Nations Measures) Order 2006- appeal rights

The judgment on the other Order in question, the *Al-Qaida and Taliban (United Nations Measures) Order 2006*, was different, and one of the Justices, Lord Brown, gave a dissenting opinion. The Court did not consider that this second Order, which did not use a 'reasonable suspicion' test, went beyond the provisions of the relevant Security Council Resolutions. The majority opinion, however, was that the *Al-Qaida and Taliban (United Nations Measures) Order 2006* left designated individuals with no judicial remedy. Lord Hope said: 'There is nothing in the listing or de-listing procedure that recognises the principles of natural justice or that provides for basic procedural fairness'.<sup>36</sup> This meant that the relevant provisions (Article 3(1)(b)) in the Order were not lawful and had to be quashed.

The dissenting opinion of Lord Brown was that the relevant Security Council Resolutions were unambiguous about the requirements for action against al-Qaeda and the 1946 Act gave unambiguous powers to give effect to such Resolutions. His concluding remark was:

I content myself with the hope that the view of the majority will not be thought to indicate any weakening in this country's commitment to the UN Charter.<sup>37</sup>

In his concluding remark on both appeals, Lord Phillips said:

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<sup>34</sup> HM Treasury v Ahmed [\[2010\] UKSC 2](#), 27 January 2010, paras 220 and 223

<sup>35</sup> HM Treasury v Ahmed [\[2010\] UKSC 2](#), para 61

<sup>36</sup> *Ibid.*, para 80

<sup>37</sup> *Ibid.*, para 206

Nobody should conclude that the result of these appeals constitutes judicial interference with the will of Parliament. On the contrary it upholds the supremacy of Parliament in deciding whether or not measures should be imposed that affect the fundamental rights of those in this country.<sup>38</sup>

## 6 The Government temporarily re-instates the Orders

On 27 January 2010, the Treasury Minister at the time, Sarah McCarthy-Fry, issued a Written Statement announcing the intention to introduce primary legislation to re-instate the asset-freezing regime:

The UK has implemented these obligations through Orders in Council made under Section 1 of the United Nations Act 1946. Section 1 of the UN Act authorises the Government to make an Order in Council to give effect to any decision of the UN Security Council where such provision appears to be "necessary or expedient for enabling those measures to be effectively applied".<sup>39</sup>

She went on:

The Government made the Orders in Council in good faith based on their belief that section 1 of the United Nations Act was an appropriate legal vehicle and that it provided the most effective and timely way of implementing UN terrorist asset freezing obligations.

The Government are committed to maintaining an effective, proportionate and fair terrorist asset-freezing regime that meets our United Nations obligations, protects national security by disrupting flows of terrorist finance, and safeguards human rights.

In the light of the court's decision and the ongoing significant threat from international terrorism, the Government intend to bring forward fast-track primary legislation to restore the UK's terrorist asset-freezing regime.<sup>40</sup>

On 3 February, Sarah McCarthy-Fry made another Written Statement, announcing the intention to replace the legislation quashed by the Supreme Court:

It is our intention to introduce legislation that effectively reinstates the Terrorism (United Nations Measures) Order 2009, which the Government has in the past used in good faith. [...] Our ambition is to mirror the 2009 Order in the legislation we present to the House.

Despite the fact that the supreme Court had described the restrictive measures imposed by the regime as 'contrary to fundamental principles of human rights',<sup>41</sup> the temporary provisions Bill did not alter the substance of these measures.

### 6.1 Suspension of the Supreme Court's decision refused

The Government had asked for the effect of the Supreme Court's decision to be suspended, to allow for replacement legislation to be passed. Having considered a partial suspension, the Court announced on 4 February that it would not grant this delay:

The ends sought by Mr Swift might well be thought desirable, but I do not consider that they justify the means that he proposes. This court should not lend itself to a procedure

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<sup>38</sup> *Ibid.*, para 157

<sup>39</sup> HC Deb 27 February 2009, c54WS

<sup>40</sup> HC Deb 27 February 2009, c54WS

<sup>41</sup> *Ahmed v HM Treasury* [2010] UKSC 2, para 203



that is designed to obfuscate the effect of its judgment. Accordingly, I would not suspend the operation of any part of the court's order.<sup>42</sup>

## 6.2 Retrospective provision

The Government therefore decided to include a retrospective provision in the *Terrorist Asset-Freezing (Temporary Provisions) Bill*. Sarah McCarthy-Fry said:

This legislation includes a provision backdated to today's judgment, providing legal authority to banks and those covered by the existing orders to ensure asset freezes can be maintained without a gap.<sup>43</sup>

The Treasury would contact banks to inform them of the legal situation. It duly issued a notice to banks:

This legislation will ensure a continued freeze on the assets of those persons designated under these Orders. Once enacted, it will also have the effect of validating retrospectively any actions taken by persons (other than the Treasury) under or in reliance on those Orders. Financial institutions and others will be protected from challenges if they maintain asset freezes in accordance with the Orders in the interim period until this Act comes into force. It is intended that the Bill will pass through all its Parliamentary stages early next week. We expect financial institutions to maintain all asset freezes under the 2001, 2006 and 2009 Terrorism Orders.<sup>44</sup>

## 6.3 Measures against al-Qaeda and the Taliban

As well as implementing the Security Council Resolutions mentioned above, the *Al-Qaida and Taliban (United Nations Measures) Order 2006* also provided for the implementation of the European asset-freezing requirements under Regulation (EC) 881/2002 of 27th May 2002,<sup>45</sup> as amended by a series of subsequent Council Regulations. The *Al-Qaida and Taliban (United Nations Measures) Order 2006* was not quashed in its entirety, and the Government decided to replace its enforcement provisions with regulations, as explained in the Statement:

The Government also intend to bring forward affirmative procedure regulations under section 2(2) of the European Communities Act 1972 to ensure that enforcement provisions are in place to implement fully EC Regulation 881/2002 in respect of measures against al-Qaeda and the Taliban.<sup>46</sup>

## 7 The Terrorist Asset-Freezing (Temporary Provisions) Act 2010

The *Terrorist Asset-Freezing (Temporary Provisions) Bill 2009-10* was the second bill to be fast-tracked since the House of Lords Constitution Committee report on fast-tracking legislation was published.<sup>47</sup> It was presented to Parliament on 5 February and received its Royal Assent on 10 February 2010.

As well as temporarily re-instating the Orders that had been quashed by the Supreme Court the temporary provisions Act asserted the validity of the 2009 Order, which had not been

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<sup>42</sup> [Judgment in \[2010\] UKSC 5](#), 4 February 2010, para 8

<sup>43</sup> HC Deb 4 February 2010, c21WS

<sup>44</sup> See HM Treasury, [Financial Sanctions Notice](#), 4 February 2010

<sup>45</sup> [Regulation \(EC\) 881/2002](#) of 27th May 2002 (OJL 139, 29.5.2002, p.9)

<sup>46</sup> HC Deb 27 February 2009, c54WS

<sup>47</sup> Select Committee on the Constitution, *Fast-track Legislation: Constitutional Implications and Safeguards*, 7 July 2009, HL 116-I 2008-09

quashed by the Court but which the judgment of the Court had identified as vulnerable to the same fate. Section 1 of the Act reads:

**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.<sup>48</sup>

Section 2 of the Act contained the retrospective provision to maintain the validity of the asset-freezing regime during the period between the Supreme Court's refusal, on 4 February, of the Government's request for a suspension of judgment and the coming into force of the Act, on 10 February 2010.

## **8 Calls for anti-terrorist legislation to be reviewed**

The UK's "patchwork" of anti-terrorist legislation has been criticised from many angles for some time. Not only from a legal point of view: one report has suggested that the existing regime has had little discernible effect on the level of terrorist activity or on convictions, although this is difficult to measure.<sup>49</sup> The controversy about control orders is perhaps the most high-profile, but asset-freezing measures have attracted attention too.

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<sup>48</sup> *Terrorist Asset-Freezing (Temporary Provisions) Act 2010*, Cap. 2, section 1

<sup>49</sup> Michael Levi, "Combating the financing of terrorism", *British Journal of Criminology* (2010) 50, pp650-69



One of the issues of concern to the Newton Committee, set up to look at anti-terrorist legislation in 2002, was that of asset-freezing provisions. The committee called for the powers for making freezing orders to be addressed again in primary legislation.<sup>50</sup>

The *Anti-Terrorism Crime and Security Act 2001* contains provisions for terrorist asset-freezing but they are not being used. In its statutory annual review of the 2001 Act in 2004, the Joint Committee on Human Rights questioned the whether the 1946 Act was the best basis for such measures, and endorsed the Newton Committee recommendations:

Section 122 of the *Anti-Terrorism, Crime and Security Act 2001* provided for the appointment of a committee of at least seven Privy Counsellors to conduct a review of the Act. The *Privy Counsellor Review Committee into the Anti-Terrorism, Crime and Security Act 2001* (known as the Newton Committee, after its chairman, Lord Newton of Braintree), was appointed in April 2002 and reported in December 2003.

At present, the power under the 2001 Act is not being used, because freezing orders are made under the Terrorism (United Nations Measures) Order 2001, which itself was made under powers conferred by the United Nations Act 1946, section 1. The operation of the freezing orders made under that Order and Act are questionable in human rights terms, because there is no right to appeal against the orders and (despite the Government's contrary view) we consider that judicial review provides only a very limited protection against legislative orders of this kind, except where they contravene European Community law.

We therefore endorse the recommendation in the Newton Committee that "freezing orders for specific use against terrorism should be addressed again in primary legislation" and that "freezing orders for other emergency situations, and the safeguards which should accompany them, should be reconsidered on their own merits in the context of more appropriate legislation for emergencies"<sup>51</sup>

In 2009, the International Commission of Jurists' Panel on Terrorism, Counter-terrorism and Human Rights drew attention to what it saw as serious deficiencies in the listing of individuals as terrorists, both at the national and international level, particularly with regard to the lack of a right of appeal.<sup>52</sup>

Before the 2010 General Election, Conservatives promised to conduct a review of terrorism legislation. Crispin Blunt MP, the then Shadow Minister for Home Affairs and Counter-Terrorism said during a debate on the renewal of the control orders provisions in the Terrorism Act 2005:

If a Conservative Government were to be elected, we would instigate a full review of the control order regime within a proper consolidation of this Government's counter-terrorist legislation. Following its consolidation in 2000, that legislation has received a decade's worth of incremental additions, so rationalisation is overdue.<sup>53</sup>

The Coalition Government's programme for government included an undertaking to "introduce safeguards against the misuse of anti-terrorism legislation."<sup>54</sup>

<sup>50</sup> Privy Counsellor Review Committee, *Anti-terrorism Crime and Security Act 2001 review: report*, HC 100, 2003-04, para 149

<sup>51</sup> Joint Committee On Human Rights, *Anti-terrorism, Crime and Security Act 2001: Statutory Review and Continuation of Part 4*, HC 38/HC 381 2003-04, part 4

<sup>52</sup> International Commission of Jurists, *Assessing Damage, Urging Action*, An initiative of the International Commission of Jurists Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights, 2009

<sup>53</sup> HC Deb 1 March 2010, c730

<sup>54</sup> The Coalition: [Our programme for Government; civil liberties](#) [accessed 2 July 2010]

The Joint Committee on Human Rights, in its report on counter-terrorism policy and human rights of March 2010, echoed the call for a review of the necessity and proportionality of all items of anti-terrorist legislation.<sup>55</sup>

### ***The terms of the Home Office review***

On 13 July 2010 the review was confirmed by the new Home Secretary, Theresa May. Ms May said that the review would not specifically cover the asset-freezing powers either in the current Bill or in other pieces of anti-terrorist legislation.

Other general questions relevant to the Bill, such as the 'reasonable suspicion' threshold, the use of special advocates and the secret use of confidential evidence, would be reviewed. In its consultation response summary document (see below) the Government undertook to present amendments to the asset-freezing regime if the review recommends stronger safeguards for civil liberties.

The items that the review is covering are:

- use of control orders
- stop and search powers in section 44 of the Terrorism Act 2000 and use of terrorism legislation in relation to photography
- detention of terrorist suspects before charge
- extending the use of deportations with assurances to remove foreign nationals from the UK who pose a threat to national security
- measures to deal with organisations that promote hatred or violence
- use of the Regulation of Investigatory Powers Act 2000 by local authorities, and access to communications data in general.<sup>56</sup>

The review is being led by Lord Ken Macdonald QC, who was made a Liberal Democrat life peer in May 2010.

## **9 The consultation on permanent legislation**

Having achieved the temporary reinstatement of the asset-freezing regime that existed under the 2006 and 2009 Orders before the Supreme Court's judgment, the then Government announced in a Written Statement that it had published a consultation paper on the introduction of a permanent solution that would establish the asset-freezing regime in primary legislation.<sup>57</sup> The consultation paper included a draft of the Bill,<sup>58</sup> and the closing date for responses to the consultation was given as 18 June 2010.

### **9.1 Responses to the consultation**

The Treasury published a summary of the consultation responses on 15 July 2010.<sup>59</sup> 16 responses had been received including from financial services companies, law firms and voluntary organisations.

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<sup>55</sup> Joint Committee on Human Rights, Counter-Terrorism Policy and Human Rights (Seventeenth Report): *Bringing Human Rights Back In*, HL 86;HC 111, 2009-10, para 120

<sup>56</sup> 'Rapid review of counter-terrorism powers', Home Office News Release, 13 July 2010

<sup>57</sup> HC Deb 8 March 2010, c1-3WS

<sup>58</sup> HM Treasury, *Public Consultation on the draft Terrorist Asset-Freezing Bill*, 18 March 2010

<sup>59</sup> HM Treasury, *Draft terrorist asset-freezing bill: summary of responses*, Cm 7888, June 2010

- Several financial services institutions were worried that the requirement for financial services companies to check whether they have had business dealings with designated persons in the **five years previous** to the date of a designation placed an undue burden on those companies. The Government accepted this and removed the requirement from the Bill.
- The Government responded to worries that the system would be **burdensome for financial institutions** by undertaking to work harder with trade and supervisory bodies to get guidance to financial institutions, and to make the clarity of licences clearer. There was also an undertaking to educate Treasury officials about the operation of the asset-freezing regime.
- On civil liberties, the majority of respondents thought that the proposed legislation did not have strong enough safeguards. The legal test of **'reasonable suspicion'** was criticised by some as being too lax. The Government stood by this test, explaining that the asset-freezing regime should be preventive in nature.
- The Government also rejected criticism of the change from the 2009 Order whereby, instead of designations being applied to persons who, it is suspected, "are" involved in terrorist activity, designations would now be applied to those who **"are or have been" involved in terrorist activity**. The Government's position is that this is not intended to include more people in the scope of the legislation, simply to reflect current practice whereby recent past activity is taken into account when deciding whether there is a "reasonable suspicion" of terrorist involvement.
- Some respondents thought that the **courts should have an earlier involvement** in the asset-freezing regime, that the secret use of **intercept material** undermined the justice of the process, that the **special advocates** system would not provide sufficient safeguard and that the asset-freezing provisions in various pieces of legislation should be **consolidated**, rather than introducing a new act. The Government's responded that, even though the asset-freezing powers were not specifically part of the Home Office review, those aspects of anti-terrorist laws, and the 'reasonable suspicion' test, would be considered.
- Some respondents thought that the **asset-freezing powers in other legislation** were sufficient. The Government said that had studied the powers in other Acts and that they would not be sufficient to cover the UK's responsibilities under the UN Security Council Resolutions.
- Some respondents thought **wording in the bill insufficiently clear**. The phrases "significant financial benefit", "economic resources", "basic expense", and the requirement to report transactions "without delay" were criticised. The Government declined to amend any of this wording but said that the Treasury would take a reasonable and flexible approach to enforcement.
- The **extra-territorial** elements of the Bill caused some concern. The Government responded that the UK has a duty to prevent UK nationals, wherever they might be, from making funds available for terrorism, so the extra-territorial provisions were necessary. It undertook, however, to try to clarify the provision in the explanatory notes to the Bill.

There follows a more detailed analysis of the responses of JUSTICE and the Association of Private Client Investment Managers and Stockbrokers, which published their responses.

## 9.2 JUSTICE

JUSTICE, the human rights and law reform organisation, responded to the consultation in June 2010. In its response, the organisation criticised the draft bill for failing to bring the terrorist asset-freezing regime under one piece of legislation, leaving UNSCR 1267 to be implemented by the draft Al Qaida and Taliban (Asset Freezing) Regulations 2010, created under section 2(2) of the European Communities Act 1972. JUSTICE quotes comments by Lord Mance in the judgment in *Ahmed v HM Treasury* questioning the wisdom of operating a patchwork of law.

JUSTICE's submission went on to point to the variety of terrorist financing provisions in the Part 3 of the Terrorism Act 2000, the asset-freezing powers of Parts 1 and 2 of the Anti-Terrorism Crime and Security Act 2001 and the financial restriction provisions of Parts 5 and 6 of the Counter-Terrorism Act 2008, and called for a general review of anti-terrorist legislation rather than continuing to add to the current 'patchwork' by passing the present Bill.

Thirdly, JUSTICE pointed to the Supreme Court's judgment, which criticised the 'reasonable suspicion' legal test used in the Orders which it quashed. The Supreme Court found that a reasonable suspicion test went beyond the requirements of the Security Council Resolution;

JUSTICE criticised the Government's consultation paper for quoting the Financial Action Task Force guidelines for supporting the contention that a 'reasonable suspicion' test is appropriate, when the Supreme Court had "made clear that a 'reasonable suspicion' test is not required in order to implement UNSCR 1373."<sup>60</sup>

By largely following the provisions in the 2009 Order, the Bill, according to JUSTICE, remained vulnerable to challenge on the grounds that it breached provisions of the European Convention on Human Rights (see below for the main differences between the Bill and the 2009 Order). The consultation response said:

In the circumstances, we believe the judgment of the Supreme Court in *Ahmed* raises serious doubts about the compatibility with fundamental rights of any primary legislation modelled upon the Terrorism Order. Specifically, the power of the Treasury to designate a person as liable to have their assets frozen for extensive periods of time on the basis of reasonable suspicion alone is likely to be held to breach the right to respect for family and private life under article 8 and the right to property under article 1 of Protocol 1 ECHR.<sup>61</sup>

JUSTICE submitted that the safeguards provided for in the Bill, such as the use of special advocates to represent the interests of designated persons, the right to apply for a designation to be overturned and the legislation review procedures, would not be strong enough to avoid the legislation being found incompatible with the provisions of the ECHR. In particular:

- the use of a 'reasonable suspicion' test meant that the possibility of mistaken designation remained too high
- the use of special advocates and the way in which intercept material would be used in closed hearings would be "inherently incapable of delivering a fair hearing"<sup>62</sup>

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<sup>60</sup> JUSTICE, *Draft Terrorist Asset-Freezing Bill: JUSTICE response to HM Treasury Consultation Cm 7852*, June 2010, p5

<sup>61</sup> JUSTICE, *Draft Terrorist Asset-Freezing Bill: JUSTICE response to HM Treasury Consultation Cm 7852*, June 2010, p6

<sup>62</sup> *Ibid*, p9

- the provisions for quarterly reporting to Parliament and independent review of the operation of the legislation, while welcome, would not provide much of a check on the disproportionate use of counter-terrorism powers<sup>63</sup>

Lastly, JUSTICE makes an appeal for the general protection of human rights as an important tool in the drive to control terrorism.

### 9.3 Association of Private Client Investment Managers and Stockbrokers

The Association of Private Client Investment Managers and Stockbrokers (APCIMS) published its response to the consultation paper on 16 July 2010.<sup>64</sup> While supporting the measures laid out in the draft Bill, APCIMS expressed the view that the measures used to implement the asset-freezing regime should be proportionate and compatible with the human rights of the individuals concerned.

The Association suggested that guidance should be provided to firms to enable them to implement the measures and predicted that firms would need help from the Treasury to identify designated persons. It particularly mentioned the provisions in paragraph 5.3 of the consultation paper, which would place a duty on financial institutions to report to the Treasury if they know or suspect that any customer from the last five years is a designated person or has committed an offence under the legislation, and to notify of any funds credited to frozen accounts.

The Association called for the Treasury to adopt a 'flexible, risk-based approach' to implementation and to allow firms to implement the legislation in a way that is consistent with their business models. It also called for clarity when firms are required to freeze or seize their clients' assets, particularly when there has been no conviction of the client, and for time limits to be adhered to.

## 10 Presentation of the Bill in the House of Lords

On 15 July 2010, the Financial Secretary to the Treasury, Mark Hoban, announced the presentation of the *Terrorist Asset-Freezing Etc. Bill 2010-11* in the House of Lords,<sup>65</sup> along with the publication of a summary of responses to the consultation,<sup>66</sup> and Explanatory Notes.<sup>67</sup> The Second Reading of the Bill in the Lords was scheduled for 27 July.

### 10.1 Differences between the Bill as presented in the Lords and the 2009 Order

The Bill as presented in the House of Lords was largely based on the provisions of the *Terrorism (United Nations Measures) Order 2009*, although the wording was different in many clauses. The most important differences between the 2009 order and the Bill were as follows:

- Clause 2(1). The legal test for deciding whether a person should be designated was changed. In the 2009 Order it was given as: reasonable suspicion that a person is 'a person who commits' terrorist activities. In the Bill, the test is reasonable suspicion that a person 'is or has been' involved in terrorist activities. According to the Government, the change of wording was not intended to broaden the scope and allow more persons to be designated. It was intended to provide greater clarity that past terrorist activity is relevant in determining whether someone should be designated.

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<sup>63</sup> *Ibid*, p9

<sup>64</sup> APCIMS, *Re: Public consultation: draft terrorist asset-freezing bill, response*, 16 June 2010

<sup>65</sup> HC Deb 15 July 2010, c36-7WS

<sup>66</sup> HM Treasury, *Draft terrorist asset-freezing bill: summary of responses*. Cm 7888, July 2010

<sup>67</sup> HM Treasury, *Terrorist Asset-Freezing Etc. Bill 2010-11: Explanatory Notes*, July 2010

- Clause 2(1). The *Terrorism (United Nations Measures) Order 2009* did not only apply prohibitions to designated persons, it also allowed the Treasury to place restrictions on those acting on their behalf or at their direction. The Bill takes a different approach. It would apply the prohibitions to designated persons only but, under the Bill, the Treasury would take the power to designate those acting on a designated person's behalf or at their direction. This change was intended to provide greater clarity about the scope of the prohibitions.
- Clause 7(1) and (4). The prohibitions against a third party handling a designated person's funds and making funds available to the designated person were changed. The *Terrorism (United Nations Measures) Order 2009* had absolute prohibitions, and it was up to the third party to show they did not know that funds would go to the designated person. The prohibitions are now worded so that they would only apply if the person knew, or had reason to suspect, that the funds belonged to or would go to the designated person. This approach is intended to be clearer and to emphasise that the prohibitions are not intended to incriminate genuinely innocent third parties.
- Clause 10. Similarly, the prohibition on making economic resources available to a designated person has been changed. Economic resources can broadly be defined as convertible assets- assets which can be used to obtain funds, goods or services. The prohibition in the *Terrorism (United Nations Measures) Order 2009* was absolute but allowed a defence where a person did not know or had no reason to suspect that the designated person would use them to generate funds, goods or services. In the Bill as presented in the House of Lords, this would only apply where the person providing the resource knows or has reason to suspect that the designated person will use the resource to obtain funds, goods or services.
- Clause 12 (3). An additional clause has been inserted which would make clear that benefits payable to the spouses of designated persons are not within the scope of asset freezes (see below).
- Clauses 24 and 25. The Bill would put onto a statutory basis the current practice whereby the Treasury presents quarterly reports to Parliament and it would require the Treasury to appoint a person to conduct an independent review after the first nine months of the operation of the legislation and every year thereafter.
- Clause 27. The Bill would confer the power to extend the provisions to cover overseas territories.
- The requirement for financial institutions to check whether they have had business dealings with designated persons in the five years previous to the date of a designation has been removed, after the consultation process persuaded the Government that it was an undue burden on industry.

## 10.2 Amendment of the Counter-Terrorism Act 2008

Part 2 of the Bill would amend Schedule 7 of the *Counter-Terrorism Act 2008*, which provides the Treasury with powers to issue directions imposing financial restrictions on those connected with a country of concern in relation to money-laundering, terrorist financing or the development of weapons of mass destruction. The Bill would amend these powers to:

- clarify the persons to whom a direction may be given, to ensure that financial institutions apply restrictions across all their branches

- broaden the definition of persons in relation to whom restrictions can be applied, allowing restrictions to be targeted against subsidiaries of companies base in the country of concern
- introduce a prohibition on circumventing the requirements of a direction
- remove some enforcement functions of the Department of Enterprise, Trade and Investment in Northern Ireland

### 10.3 The treatment of spouses and their benefit payments

The licensing regime allowing designated persons to receive funds to cover their basic needs had been controversial and subject to litigation. Council Regulation (EC) 881/2002 prohibits making funds available directly or indirectly for the benefit of the designated person without a licence from a competent authority.<sup>68</sup> The Treasury used to take this to include the payment of state benefits to the spouses or partners of designated persons where they lived together, and therefore licensed the payment of benefits to designated persons' partner's bank accounts, but required the partner to report to the Treasury on how the funds were spent.

This interpretation of the Regulation was challenged by a number of spouses living with designated persons. The House of Lords Appellate Committee considered the Treasury's regime unnecessarily oppressive:

...this intrusive regime is not required by article 2.2 of the Regulation. First, it is not required to give effect to the purpose of the Security Council Resolution, which was obviously to prevent funds from being used for terrorist activities. Indeed, the licence tells Mrs M that the licence conditions are "to provide safeguards against the risk of these funds being diverted to terrorism." It is however hard to see how the expenditure of money on domestic expenses, such as buying household food, from which Mr M derives a benefit in kind, can create any risk that he may divert funds to terrorism.<sup>69</sup>

This being the case, the House of Lords decided to stay proceedings and referred the case to the Court of Justice of the European Communities (ECJ) for a judgment.

The Advocate General of the ECJ gave an opinion on 14 January 2010 to the effect that the provision should not be interpreted to include state benefits. This opinion, while not binding on the ECJ or on the Government, led the Government to announce that it would no longer require spouses to report on how the benefits were spent.<sup>70</sup>

On 29 April, the ECJ confirmed the opinion of the House of Lords Appellate Committee and of the Advocate General.<sup>71</sup> The ECJ ruled that Article 2(2) of Council Regulation (EC) No 881/2002:

...must be construed as not applying to the provision by the State of social security or social assistance benefits to the spouse of a person designated by the committee created pursuant to Paragraph 6 of Resolution 1267 (1999) of the Security Council of the United Nations and included in the list in Annex I to that regulation, as amended, on the grounds only that the spouse lives with that person and will or may use some of

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<sup>68</sup> [Council Regulation \(EC\) No 881/2002 of 27 May 2002](#),

<sup>69</sup> House of Lords Appellate Committee, R (on the application of M) (FC)(Appellant) v Her Majesty's Treasury (Respondents) and two other actions, [Report](#), 30 April 2008

<sup>70</sup> HC Deb 5 February 2010, c31-4WS

<sup>71</sup> European Court of Justice, M and Others v Her Majesty's Treasury, Case C340/08, [Judgment of the Court](#) (Fourth Chamber) 29 April 2010



those payments to pay for goods and services which the designated person also will consume or from which he also will benefit.<sup>72</sup>

On 15 July, in the statement in which the Government announced the presentation of the *Terrorist Asset-Freezing Etc Bill* to the House of Lords, Financial Secretary to the Treasury Mark Hoban also announced that the Government would from that day remove the restrictions imposed by the previous Government on the payment of state benefits to the spouses of people who are subject to an asset freeze. The statement went on:

This Government does not believe that the asset freezing regime should affect state benefits paid to the spouses or partners of designated persons. It does not believe that such restrictions are necessary to prevent terrorist finance and it is concerned at the impact they may have on other family members and on family life.<sup>73</sup>

The change was embedded in the Bill, where Clause 12 subsection (3) makes it clear that spouses' benefits are not affected by asset-freezing provisions.

## 11 The Bill's progress

### 11.1 Constitution Committee report

On 22 July, before Second Reading, the House of Lords Constitution Select Committee published a report on the Bill.<sup>74</sup> The Committee found that an effective asset-freezing regime is essential but considered that the Bill raises important constitutional concerns:

These relate to the rule of law, to the principle of legal certainty, to the principle of effective parliamentary scrutiny, to the powers and responsibilities of the courts of law, and to the legal balance between executive powers and civil liberties.

The Committee drew attention to

- the fact that different asset-freezing regimes are contained in several pieces of legislation, undermining the principles of legal certainty and parliamentary scrutiny;<sup>75</sup>
- the 'reasonable suspicion' test for designation, which goes "beyond that which is necessary with reference to international law,"<sup>76</sup> and is lower than the thresholds in asset-freezing regimes in other pieces of legislation;<sup>77</sup>
- the fact that the Bill was being carried forward without knowing the recommendations of the Home Office review of anti-terrorist legislation in relation to the 'reasonable suspicion' test;<sup>78</sup>
- the proposed procedure for making applications to the High Court (the Court of Session in Scotland) for designations to be set aside, which might not be adequate to safeguard against potential abuse;<sup>79</sup>

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<sup>72</sup> *Ibid.*

<sup>73</sup> HC Deb 15 July 2010, c36-7WS

<sup>74</sup> House of Lords Select Committee on the Constitution, *Terrorist Asset-Freezing Etc. Bill: Report*, HL 25, 2010-11

<sup>75</sup> *Ibid.*, para 18

<sup>76</sup> *Ibid.*, para 19

<sup>77</sup> *Ibid.*, para 20

<sup>78</sup> *Ibid.*, para 22

<sup>79</sup> *Ibid.*, para 24



- the use of the provisions of sections 66-68 of the *Counter Terrorism Act 2008* to apply to actions brought under Clause 22. The committee criticised the fact that the Bill did not spell out exactly what the courts' powers are in relation to asset-freezing proceedings: it was necessary to refer to the Civil Procedure Rules for detail, and the conduct of these cases would be quite different from regular judicial review cases even though the principles of judicial review were referred to in Clause 22(3). The committee called for Clause 22 to be redrafted to set out what courts' powers are in these cases,<sup>80</sup> and
- the use of undisclosed evidence.<sup>81</sup>

The Committee said that it might undertake further scrutiny of the Bill in the autumn.

### 11.2 Delegated Powers and Regulatory Reform Committee

On 27 July, the House of Lords Delegated Powers and Regulatory Reform Committee published a report on the Bill.<sup>82</sup> The committee expressed only one concern about the Bill, referring to the "Henry VIII" power in Clause 36(3), which gives ministers the power to effect the addition of further "relevant" Security Council resolutions by means of a statutory instrument subject to the negative resolution procedure, and to remove superseded Security Council resolutions.

The committee invited the House of Lords to define more clearly the meaning of "relevant" in the context of the legislation.

### 11.3 Lords Second Reading

The Bill's Second Reading debate took place in the Lords on 27 July 2010.<sup>83</sup> Commercial Secretary to the Treasury, **Lord Sassoon**, spoke for the Government. He outlined the changes that the Bill would make to the existing regime but acknowledged that these would not fully address civil liberties concerns, particularly the legal test for asset-freezing, which stood at "reasonable suspicion", and the role of the courts in the making and reviewing of asset-freezing decisions. He said that, should the Home Office review of anti-terrorism legislation suggest further safeguards associated with asset-freezing, the Government would amend the legislation.

Turning to the observations of the Constitution Committee,<sup>84</sup> Lord Sassoon said that it was necessary at this stage to place the domestic asset-freezing regime in a **separate piece of legislation** from other asset-freezing regimes because the priority was to put the regime on a permanent basis before the expiry of the temporary legislation on 31 December 2010.

He argued that the lower, '**reasonable suspicion**' test was necessary to allow for action to be taken early to meet an imminent national security threat. He said that the **Home Office review** would indeed help inform any additional safeguards that might be needed, and that discussions were being held between the Treasury and the Home Office. Lord Sassoon defended **Clause 22**, on the procedure for review of decisions by the courts, saying that Clause 22 was based closely on Section 63 of the *Counter-Terrorism Act 2008* and that it was reasonable to have the same court procedure as those applicable in other asset-freezing regimes. He did not mention redrafting the clause.

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<sup>80</sup> *Ibid.*, para 26

<sup>81</sup> *Ibid.*, para 28

<sup>82</sup> House of Lords Delegated Powers and Regulatory Reform Committee, *Second Report*, HL 31 2010-11

<sup>83</sup> HL Deb 27 July 2010, c1250-86

<sup>84</sup> HL Deb 27 July 2010, c1253

Article 6 of the *European Convention on Human Rights* says that: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law". Among other things, that means being "informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him"

On **closed source material**, he said that the Government is committed to acting in a way consistent with European Convention on Human Rights Article 6.

**Lord Davidson of Glen Clova** responded to the Bill, confirming that the Opposition did not disagree with the purpose of the Bill: to continue the asset-freezing regime put in place by the previous Government. Lord Davidson did, however, ask whether the Government was sure that the Bill should proceed without regard to the review of anti-terrorism legislation being conducted by the Home Office, and questioned whether it was sensible to have separate asset-freezing regimes in different pieces of legislation.

Lord Davidson also asked about the costs of quarterly reporting and the independent reviewer. He also wondered whether the review of anti-terrorist legislation would consider strengthening the existing system for applicants to have their designations reviewed. These reviews are presently carried out by a procedure based on the principles of judicial review.

**Lord Pannick** asked why the title of the Bill had been changed to add the word "etc.", wondering whether it was the Government's intention to use the legislation as a vehicle for adding further measures that might be recommended by the Home Office terrorist law review.<sup>85</sup> Lord Sassoon said that this had been done to cover the amendments being made by the Bill to the *Counter-terrorism Act*, and that there was no intention to add anything from the conclusions of the Home Office review.

A number of peers wondered whether the Treasury or the Home Office was the right department to handle these designations.

Closing the debate, Lord Sassoon mentioned that, at the time, there were 26 individuals subject to asset-freezing orders, and a total of some £150,000 was frozen. He said that estimates suggest that the 7 July London Tube bombings cost only £8,000 to mount.

In answer to an earlier question by Lord Patten, who had asked whether the provisions of the Bill would be extended quickly to the Channel Islands and the Isle of Man, Lord Sassoon said that they would, either by means of an order made under the Bill or by the territories' own legislation.

#### 11.4 Lords Committee stage- important changes to the Bill

The Bill was debated in Committee of the Whole House on 6 October 2010,<sup>86</sup> and what Lord Lloyd of Berwick described as "fundamental" changes were proposed by the Government.<sup>87</sup> The Government spokesman, Lord Sassoon, said that the Treasury had considered the civil liberties concerns and was tabling two amendments to the Bill with the following effects:

- In an amendment to Clause 2, the legal threshold for general designation would be raised from "**reasonable suspicion**" to "reasonable belief". "Reasonable suspicion" would remain available for interim designations of 30 days. The second element of

<sup>85</sup> HL Deb 27 July 2010, c1261

<sup>86</sup> HL Deb 6 October 2010, c120-74; c190-214. Only some of the amendments moved during the debate are discussed here.

<sup>87</sup> HL Deb 6 October 2010, c123

justification for designation: that it must be necessary for public protection, would remain the same.

- Challenges to Treasury decisions to impose, vary or renew asset freezes would be heard by the courts under an **appeal procedure** rather than a judicial review procedure.<sup>88</sup> Challenges to other decisions, such as Treasury licensing decisions, would continue to be subject to judicial review.

On the first of these changes, Lord Sassoon explained that the Government wanted to retain the ability to impose asset freezes where there was a terrorist threat but where it might not be possible to meet the higher threshold, for example where investigations were continuing. It might, for example, be necessary to impose a freeze directly after an arrest, to prevent funds being dispersed to associates of plotters. If, at the end of the 30-day period, the higher threshold could not be reached, the freeze would be lifted.

While Peers generally welcomed the change, there were calls for the courts to be given the responsibility of issuing freezing orders, rather than the Treasury.

The Government amendments to Clause 2 were agreed. The first would raise the legal threshold for final designation, while the others would give the Treasury the power to impose interim 30-day designations using the lower threshold, and amend other references to the designation orders.

Regarding the amendment to allow courts to follow an appeal procedure rather than an judicial review procedure when reviewing Treasury designations, Lord Sassoon said, “this ensures that there will be a robust, in-depth review by the courts of the Treasury decisions.”<sup>89</sup>

A number of other amendments were withdrawn, such as one tabled by **Baroness Hamwee** that would have removed the phrase “is or has been involved in terrorist activity” and replaced it with “has committed or attempted to commit terrorist acts”,<sup>90</sup> and another seeking to ensure that the requirement in Clause 18 to provide information did not result in self-incrimination.<sup>91</sup> These matters are discussed more fully in the section relating to the Report Stage, below.

### 11.5 Northern Ireland Assembly

The Bill was briefly debated in the Northern Ireland Assembly on 11 October, where the relevant issue was the transfer of the regulatory responsibility for credit unions in Northern Ireland from the Northern Ireland Department for Enterprise to the Financial Services

#### Judicial review

“Judicial review is a type of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body. In other words, judicial reviews are a challenge to the way in which a decision has been made, rather than the rights and wrongs of the conclusion reached. It is not really concerned with the conclusions of that process and whether those were 'right', as long as the right procedures have been followed. The court will not substitute what it thinks is the 'correct' decision. This may mean that the public body will be able to make the same decision again, so long as it does so in a lawful way.”

Source: Judiciary of England and Wales website [accessed 8 November 2010]

<sup>88</sup> HL Deb 6 October 2010, c120

<sup>89</sup> HL Deb 6 October 2010, c120

<sup>90</sup> HL Deb 6 October 2010, c139

<sup>91</sup> HL Deb 6 October 2010, c196

Authority, or its successor. The Assembly agreed to a motion that the provisions in the Bill relating to Northern Ireland should be considered by the UK Parliament.<sup>92</sup>

### 11.6 Joint Committee on Human Rights report

On 22 October 2010, the JCHR published its report into the Bill.<sup>93</sup> Because the Bill was progressing through the House of Lords on a tight timetable, the committee took the unusual step of publishing its findings in a preliminary report, without waiting for the response to questions it had raised with Ministers during its investigation.

The committee welcomed the new “**reasonable belief**” threshold:

We believe the Government’s amendment raising the legal threshold to reasonable belief goes some way to meeting the human rights concern about the breadth of the power and therefore welcome the raising of the legal threshold as a human rights enhancing safeguard.<sup>94</sup>

The committee wanted to know if the “reasonable belief” threshold for final designations necessarily implied a “balance of probabilities” standard of proof. If not, the committee suggested that the wording of the Bill should be changed to make explicit that the “balance of probabilities” was the required standard of proof.

On the **right of appeal**, the committee said:

We welcome the introduction of a full right of appeal against asset-freezes as a human rights enhancing safeguard within the current text of the Bill. However, we recommend that the Government provide a more detailed justification of its view that prior judicial authorisation of final asset-freezes is neither required by human rights law nor compatible with maintaining an effective terrorist asset-freezing regime.<sup>95</sup>

On the question of the **use of closed material and special advocates**, the committee found that the procedures set out in the Bill did not ensure that the right to a fair hearing would be safeguarded. It recommended making four changes to the process:

- imposing on the Treasury a duty to give reasons when notifying of a designation;
- imposing a duty to provide sufficient information to enable effective instructions to be given by the person designated to his or her counsel;
- revoking the Civil Procedure Rule which “subordinates justice to non-disclosure”. Rule 79.2 of the Civil Procedure Rules expressly elevates nondisclosure over justice by requiring that in control order cases the “overriding objective” of the civil procedure rules (requiring courts to deal with cases justly) be read and given effect in a way which is compatible with the duty to ensure that information is not disclosed contrary to the public interest;
- allowing for communication between the person who is the subject of an asset-freeze and the special advocate after sight of closed material.<sup>96</sup>

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<sup>92</sup> Northern Ireland Assembly Official Report (Hansard), 11 October 2010 p99-103

<sup>93</sup> Joint Committee on Human Rights, *Legislative Scrutiny: Terrorist Asset- Freezing etc. Bill (Preliminary Report)*, HL 41/ HC 535, 2010-11

<sup>94</sup> *Ibid.*, p3

<sup>95</sup> *Ibid.*, p4

<sup>96</sup> *Ibid.*, p4

The committee also recommended that Parliament itself should be able to appoint the proposed independent reviewer and that the reviewer should report directly to Parliament.

### 11.7 Report Stage

During the Report Stage debate of 25 October 2010,<sup>97</sup> **Lord Lloyd of Berwick**, a former Law Lord, said that the Government, while addressing the Supreme Court's *ultra vires* criticism, had largely ignored the Supreme Court's criticisms of the previous legislation purely on human rights grounds.

He returned to the wording of Security Council Resolution 1373, which requires the freezing of the assets of those 'who commit or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts'. This wording, he argued, suggested that only those who had been charged or convicted of terrorist offences should have their assets frozen. He argued that the practical difference between "suspicion" and "belief" was not great and that the "belief" threshold still went further than the "those who commit" requirement in the UN Resolution. Lord Lloyd's amendment would have added a new clause, only allowing the Treasury to make a final designation only of someone who has been **charged with a terrorism offence**.

Lord Sassoon, for the Government, said that restricting final designation to those who had been charged with terrorist offences would undermine the preventive purpose of the UN Resolution, which aimed to stop funds being used for the purpose of committing terrorist acts.

Lord Lloyd declined to withdraw his amendment. The House voted against it by 292 to 17.<sup>98</sup>

The Government then moved a minor amendment to clarify "involvement in" terrorist activity, which **Baroness Hamwee** had worried at Committee Stage would widen the definition of those susceptible to designation to mere associates of terrorists. The amendment was agreed.<sup>99</sup>

Another Government amendment was moved to clarify the duties of the Treasury to notify a person whose designation had been varied or revoked. Where Clause 5 had required Treasury officials to take "such steps as they consider appropriate" to notify people, they would now have to take "reasonable steps". The amendment was agreed.

Lord Lloyd then moved an amendment to Clause 6, to provide for the **High Court or, in Scotland, the Court of Session to make interim designations** rather than a Treasury minister. He argued that this was the normal procedure for asset-freezing in commercial and criminal proceedings. For the Government, Lord Sassoon argued that it was normal for ministers to take such national security decisions and to be accountable to Parliament and to the courts for them. He also said that there were "strong international comparisons for this approach."<sup>100</sup> He also argued that freezing orders do not impact on human rights to the same extent as control orders. Lord Lloyd withdrew the amendment.

There followed debate on a group of amendments to Clause 6, relating to interim designations. The amendments sought to ensure that interim designations, with their lower legal threshold, would only be used in urgent cases; that repeated interim designations should not be used; and that where an interim designation expires, this would not prohibit the continued investigation of that person by the relevant authorities. Lord Sassoon said that

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<sup>97</sup> HL Deb 25 October 2010, c1035-92. Only a selection of amendments is discussed here.

<sup>98</sup> HL Deb 25 October 2010, c1046

<sup>99</sup> HL Deb 25 October 2010, c1048

<sup>100</sup> HL Deb 25 October 2010, c1052

existing constraints in the legislation, together with Government amendments on the use of the same evidence for a second interim designation, should answer these concerns. The amendments were withdrawn or not moved. Government amendments 14, 16 and 18 were agreed.<sup>101</sup>

**Baroness Hamwee** then spoke to a group of amendments to Clause 17, concerning the licensing regime, whereby enough of a designated person's assets may be released to cover reasonable living expenses. The amendments sought to clarify the Treasury's duties in issuing licenses, ensure that licences can be varied, and to clarify that a person has a right to seek legal aid or to pay for **legal representation** from their own funds. Lord Sassoon replied that the Treasury has a duty to act in a way that complies with the provisions of the *Human Rights Act 1998*, and that this made the amendments unnecessary. Amendment 19 was withdrawn and the other amendments were not moved.<sup>102</sup>

Lady Hamwee presented an amendment to Clause 22 that would protect a person from self-incrimination when complying with the Bill's requirement to provide information. **Lord Wallace of Tankerness**, for the Government, said that in practice this was not necessary because the existing requirement allowed for a person not to provide information if they had a "reasonable excuse" and that would include avoidance of self-incrimination. The amendment was withdrawn.

**Lord Pannick** spoke to an amendment of Clause 26, which sought to clarify that a court could **award damages** even where it could not be shown that an official had acted in bad faith or recklessly. Lord Wallace was not convinced that the proposed amendment would make the situation much clearer, but undertook to reflect on the comments made in support of the amendment. The amendment was withdrawn.<sup>103</sup>

Lord Pannick then presented a pair of amendments to Clause 28, that would seek to ensure that **information** supplied to a designated person who appealed against a designation would be sufficient for the appellant to instruct his or her lawyers (in these cases, the special advocate). Lord Pannick said that this legal principle had been applied to asset-freezing by the European Court of Justice in the Kadi case.<sup>104</sup> He also said that the principle had been applied in a judgment of the Court of Appeal in the Bank Mellat case,<sup>105</sup> and in the Supreme Court judgment in the Ahmed v HM Treasury case, which led to the quashing of the asset-freezing Orders in Council and the necessity for the present Bill.

Lord Wallace replied that the Government's position was that asset-freezing orders were less severe restrictions of personal liberty than control orders and therefore different conditions could apply to them; he also said that the courts and the Treasury would be bound by the provisions of the Human Rights Act that guarantee a fair hearing. Although Lord Pannick disputed the reply given by Lord Wallace, he withdrew the amendment.<sup>106</sup>

**Lord Judd** then spoke to a group of amendments to Clause 31 dealing with the **independent reviewer**. The changes suggested in the amendment were recommended by the Joint Committee on Human Rights in its report on the Bill. They were that the reviewer should report to Parliament; that Parliament should approve the arrangements for the appointment of the reviewer and appoint the reviewer itself; and that the secretariat should be independent of government; and that the appointment should be for a finite period.

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<sup>101</sup> HL Deb 25 October 2010, c1059

<sup>102</sup> HL Deb 25 October 2010, c1064

<sup>103</sup> HL Deb 25 October 2010, c1071

<sup>104</sup> European Court of Justice, Case T85/09, [Judgment](#), 30 September 2010

<sup>105</sup> "Disclosure is required- Bank Mellat v HM Treasury", *Times Law Reports*, 18 May 2010

<sup>106</sup> HL Deb 25 October 2010, c1080



Lord Sassoon rejected the suggestions, saying that it was normal practice for the Government to make appointments such as these, that the independence or otherwise of reviewers was decided by cultural rather than bureaucratic factors and that the Government would support the independence of the reviewer, and make his or her reports available to Parliament as soon as possible. He also mentioned the cost of setting up an independent secretariat.

The House voted on the amendments. 122 were in favour and 143 against, so the amendment was not accepted.<sup>107</sup>

### 11.8 Lords Third Reading

During the Third Reading debate,<sup>108</sup> **Lord Lloyd of Berwick** proposed an amendment which sought to clarify whether Clause 2, which gives Treasury ministers the power to designate a person and freeze his assets, has extra-territorial effect. The question revolved around the problem of whether a designated person abroad or their assets in the UK were being affected by the law, whether this amounted to extraterritoriality and, if so, whether the Bill provided for this with sufficient clarity. Lord Lloyd asked:

What does "person" in Clause 2 mean? The noble Lord argues that it includes foreigners outside the jurisdiction. Of course, Parliament can legislate to cover foreigners outside the jurisdiction; there is no question about that. However, the presumption is that Parliament does not intend to do so unless very clear words are used.<sup>109</sup>

Lord Lloyd's argument was that it was not clear that the Bill gave ministers such extraterritorial powers and that, in general, a person should be subject to the laws of their country of residence. He said that if a terrorist was identified living in France it should be up to France to designate that person.

Lord Wallace countered that, firstly, it was up to the country where the funds were to control those funds, and that was the main purpose of the legislation. Secondly, he said that in many cases, terrorist might often live in countries that do not or cannot cooperate in countering terrorism.

Lord Wallace summarised the Government's position as follows:

Clause 2 does not limit the Treasury to designating only persons who are in the UK, and nor should it. While we have listened carefully to the noble Lord's arguments today, on Report and in the exchanges that he has had with my noble friend, we are satisfied that the wording of Clause 2 as it stands is sufficiently clear in this regard. It does not make the provision extra-territorial. Clause 2 merely identifies those persons involved in terrorism whose assets persons in the UK cannot deal with and whom persons in the UK cannot assist by providing funds or economic resources.<sup>110</sup>

Lord Lloyd persisted in his argument that a small change to Clause 2 would clarify the meaning of the Bill with relation to its territorial extent, but withdrew the amendment.

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<sup>107</sup> HL Deb 25 October 2010, c1090

<sup>108</sup> HL Deb 1 November 2010, c1425-32

<sup>109</sup> HL Deb 1 November 2010, c1425

<sup>110</sup> HL Deb 1 November 2010, c1431

Lastly, the Government tabled an amendment to Clause 23 to make it clear that the disclosure of information obtained under Part 1 of the Bill could also be to the law officer of the Isle of Man. The amendment was agreed on a question.<sup>111</sup>

## 12 Reaction to the Bill

In general, there has been little public contribution to the debates, something which was bemoaned by at least one peer during the Bill's progress through the House of Lords.

Liberty, the civil liberties group, and JUSTICE issued a joint briefing for the Lords Committee Stage of the Bill. The briefing summarised the organisations' position on the Bill as it was before it was amended by the Lords.<sup>112</sup> The joint report contained a list of proposed amendments to the Bill, some of which were taken up by peers and proposed during debates.

A further joint briefing was published taking account of the amendments made at Committee Stage.<sup>113</sup> In it the two organisations described the difference between reasonable suspicion and reasonable belief as "marginal", and called for designations only to be allowed to be made of persons who have been arrested, and thus entered the normal criminal justice system.

Also unsatisfactory was the decision to allow designated persons their right of appeal: the organisations questioned whether those designated would be able to find the funds for an appeal, given restrictions that would have been placed on them.

Liberty and JUSTICE also called for a right of appeal or review to be given to people listed by the EU in relation to UN Security Council Resolution 1267.

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<sup>111</sup> HL Deb 1 November 2010, c1431

<sup>112</sup> Liberty and JUSTICE, *Joint Committee Stage Briefing on the Terrorist Asset-Freezing etc. Bill in the House of Lords*, September 2010

<sup>113</sup> Liberty and JUSTICE, *Joint Briefing for Second Reading on the Terrorist Asset-Freezing etc. Bill in the House of Commons*, November 2010



## **Appendix 1 – UN Security Council Resolution 1267 (1999)**

Adopted by the Security Council at its 4051st meeting on 15 October 1999

The Security Council,

Reaffirming its previous resolutions, in particular resolutions 1189 (1998) of 13 August 1998, 1193 (1998) of 28 August 1998 and 1214 (1998) of 8 December 1998, and the statements of its President on the situation in Afghanistan, Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and national unity of Afghanistan, and its respect for Afghanistan's cultural and historical heritage,

Reiterating its deep concern over the continuing violations of international humanitarian law and of human rights, particularly discrimination against women and girls, and over the significant rise in the illicit production of opium, and stressing that the capture by the Taliban of the Consulate-General of the Islamic Republic of Iran and the murder of Iranian diplomats and a journalist in Mazar-e-Sharif constituted flagrant violations of established international law,

Recalling the relevant international counter-terrorism conventions and in particular the obligations of parties to those conventions to extradite or prosecute terrorists,

Strongly condemning the continuing use of Afghan territory, especially areas controlled by the Taliban, for the sheltering and training of terrorists and planning of terrorist acts, and reaffirming its conviction that the suppression of international terrorism is essential for the maintenance of international peace and security,

Deploring the fact that the Taliban continues to provide safe haven to Usama bin Laden and to allow him and others associated with him to operate a network of terrorist training camps from Taliban-controlled territory and to use Afghanistan as a base from which to sponsor international terrorist operations,

Noting the indictment of Usama bin Laden and his associates by the United States of America for, inter alia, the 7 August 1998 bombings of the United States embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania and for conspiring to kill American nationals outside the United States, and noting also the request of the United States of America to the Taliban to surrender them for trial (S/1999/1021),

Determining that the failure of the Taliban authorities to respond to the demands in paragraph 13 of resolution 1214 (1998) constitutes a threat to international peace and security,

Stressing its determination to ensure respect for its resolutions,

Acting under Chapter VII of the Charter of the United Nations,

1. Insists that the Afghan faction known as the Taliban, which also calls itself the Islamic Emirate of Afghanistan, comply promptly with its previous resolutions and in particular cease the provision of sanctuary and training for international terrorists and their organizations, take appropriate effective measures to ensure that the territory under its control is not used for terrorist installations and camps, or for the preparation or organization of terrorist acts against other States or their citizens, and cooperate with efforts to bring indicted terrorists to justice;

2. Demands that the Taliban turn over Usama bin Laden without further delay to appropriate authorities in a country where he has been indicted, or to appropriate authorities in a country where he will be returned to such a country, or to appropriate authorities in a country where he will be arrested and effectively brought to justice;

3. Decides that on 14 November 1999 all States shall impose the measures set out in paragraph 4 below, unless the Council has previously decided, on the basis of a report of the Secretary-General, that the Taliban has fully complied with the obligation set out in paragraph 2 above;

4. Decides further that, in order to enforce paragraph 2 above, all States shall:

(a) Deny permission for any aircraft to take off from or land in their territory if it is owned, leased or operated by or on behalf of the Taliban as designated by the Committee established by paragraph 6 below, unless the particular flight has been approved in advance by the Committee on the grounds of humanitarian need, including religious obligation such as the performance of the Hajj;

(b) Freeze funds and other financial resources, including funds derived or generated from property owned or controlled directly or indirectly by the Taliban, or by any undertaking owned or controlled by the Taliban, as designated by the Committee established by paragraph 6 below, and ensure that neither they nor any other funds or financial resources so designated are made available, by their nationals or by any persons within their territory, to or for the benefit of the Taliban or any undertaking owned or controlled, directly or indirectly, by the Taliban, except as may be authorized by the Committee on a case-by-case basis on the grounds of humanitarian need;

5. Urges all States to cooperate with efforts to fulfil the demand in paragraph 2 above, and to consider further measures against Usama bin Laden and his associates;

6. Decides to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council consisting of all the members of the Council to undertake the following tasks and to report on its work to the Council with its observations and recommendations:

(a) To seek from all States further information regarding the action taken by them with a view to effectively implementing the measures imposed by paragraph 4 above;

(b) To consider information brought to its attention by States concerning violations of the measures imposed by paragraph 4 above and to recommend appropriate measures in response thereto;

(c) To make periodic reports to the Council on the impact, including the humanitarian implications, of the measures imposed by paragraph 4 above;

(d) To make periodic reports to the Council on information submitted to it regarding alleged violations of the measures imposed by paragraph 4 above, identifying where possible persons or entities reported to be engaged in such violations;

(e) To designate the aircraft and funds or other financial resources referred to in paragraph 4 above in order to facilitate the implementation of the measures imposed by that paragraph;

(f) To consider requests for exemptions from the measures imposed by paragraph 4 above as provided in that paragraph, and to decide on the granting of an exemption to these measures in respect of the payment by the International Air Transport Association (IATA) to

the aeronautical authority of Afghanistan on behalf of international airlines for air traffic control services;

(g) To examine the reports submitted pursuant to paragraph 9 below;

7. Calls upon all States to act strictly in accordance with the provisions of this resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to the date of coming into force of the measures imposed by paragraph 4 above;

8. Calls upon States to bring proceedings against persons and entities within their jurisdiction that violate the measures imposed by paragraph 4 above and to impose appropriate penalties;

9. Calls upon all States to cooperate fully with the Committee established by paragraph 6 above in the fulfilment of its tasks, including supplying such information as may be required by the Committee in pursuance of this resolution;

10. Requests all States to report to the Committee established by paragraph 6 above within 30 days of the coming into force of the measures imposed by paragraph 4 above on the steps they have taken with a view to effectively implementing paragraph 4 above;

11. Requests the Secretary-General to provide all necessary assistance to the Committee established by paragraph 6 above and to make the necessary arrangements in the Secretariat for this purpose;

12. Requests the Committee established by paragraph 6 above to determine appropriate arrangements, on the basis of recommendations of the Secretariat, with competent international organizations, neighbouring and other States, and parties concerned with a view to improving the monitoring of the implementation of the measures imposed by paragraph 4 above;

13. Requests the Secretariat to submit for consideration by the Committee established by paragraph 6 above information received from Governments and public sources on possible violations of the measures imposed by paragraph 4 above;

14. Decides to terminate the measures imposed by paragraph 4 above once the Secretary-General reports to the Security Council that the Taliban has fulfilled the obligation set out in paragraph 2 above;

15. Expresses its readiness to consider the imposition of further measures, in accordance with its responsibility under the Charter of the United Nations, with the aim of achieving the full implementation of this resolution;

16. Decides to remain actively seized of the matter.

## **Appendix 2 – UN Security Council Resolution 1333 (2000)**

Adopted by the Security Council at its 4251st meeting, on 19 December 2000

The Security Council, Reaffirming its previous resolutions, in particular resolution 1267 (1999) of 15 October 1999 and the statements of its President on the situation in Afghanistan,

Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and national unity of Afghanistan, and its respect for Afghanistan's cultural and historical heritage,

Recognizing the critical humanitarian needs of the Afghan people,

Supporting the efforts of the Personal Representative of the Secretary-General for Afghanistan to advance a peace process through political negotiations between the Afghan parties aimed at the establishment of a broad-based, multi-ethnic, and fully representative government, and calling for the warring factions to cooperate fully with those efforts to conclude a ceasefire and begin discussions leading to a political settlement, by moving forward promptly in the process of dialogue to which they have committed themselves,

Noting the December 2000 meeting of the Afghan Support Group which emphasized that the situation in Afghanistan is a complex one that requires a comprehensive, integrated approach to a peace process and issues of narcotics trafficking, terrorism, human rights, and international humanitarian and development aid,

Recalling the relevant international counter-terrorism conventions and in particular the obligations of parties to those conventions to extradite or prosecute terrorists,

Strongly condemning the continuing use of the areas of Afghanistan under the control of the Afghan faction known as Taliban, which also calls itself the Islamic Emirate of Afghanistan (hereinafter known as the Taliban), for the sheltering and training of terrorists and planning of terrorist acts, and reaffirming its conviction that the suppression of international terrorism is essential for the maintenance of international peace and security,

Noting the importance of the Taliban acting in accordance with the 1961 Single Convention, the 1971 Convention on Psychotropic Substances, and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, and the commitments of the 1998 Twentieth Special Session of the General Assembly on Narcotic Drugs, including to work closely with the United Nations Drug Control Programme,

Noting that the Taliban benefits directly from the cultivation of illicit opium by imposing a tax on its production and indirectly benefits from the processing and trafficking of such opium, and recognizing that these substantial resources strengthen the Taliban's capacity to harbour terrorists,

Deploring the fact that the Taliban continues to provide safe haven to Usama bin Laden and to allow him and others associated with him to operate a network of terrorist training camps from Taliban-controlled territory and to use Afghanistan as a base from which to sponsor international terrorist operations,

Noting the indictment of Usama bin Laden and his associates by the United States of America for, inter alia, the 7 August 1998 bombings of the United States embassies in Nairobi, Kenya and Dar es Salaam, Tanzania and for conspiring to kill American nationals outside the United States, and noting also the request of the United States of America to the Taliban to surrender them for trial (S/1999/1021),

Reiterating its deep concern over the continuing violations of international humanitarian law and of human rights, particularly discrimination against women and girls, and over the significant rise in the illicit production of opium,

Stressing that the capture by the Taliban of the Consulate-General of the Islamic Republic of Iran and the murder of Iranian diplomats and a journalist in Mazar-e-Sharif constituted flagrant violations of established international law,

Determining that the failure of the Taliban authorities to respond to the demands in paragraph 13 of resolution 1214 (1998) and in paragraph 2 of resolution 1267 (1999) constitutes a threat to international peace and security,

Stressing its determination to ensure respect for its resolutions,

Reaffirming the necessity for sanctions to contain adequate and effective exemptions to avoid adverse humanitarian consequences on the people of Afghanistan, and that they be structured in a way that will not impede, thwart or delay the work of international humanitarian assistance organizations or governmental relief agencies providing humanitarian assistance to the civilian population in the country,

Underlining the responsibility of the Taliban for the well-being of the population in the areas of Afghanistan under its control, and in this context calling on the Taliban to ensure the safe and unhindered access of relief personnel and aid to all those in need in the territory under their control,

Recalling the relevant principles contained in the Convention on the Safety of United Nations and Associated Personnel adopted by the General Assembly in its resolution 49/59 of 9 December 1994,

Acting under Chapter VII of the Charter of the United Nations,

1. Demands that the Taliban comply with resolution 1267 (1999) and, in particular, cease the provision of sanctuary and training for international terrorists and their organizations, take appropriate effective measures to ensure that the territory under its control is not used for terrorist installations and camps, or for the preparation or organization of terrorist acts against other States or their citizens, and cooperate with international efforts to bring indicted terrorists to justice;

2. Demands also that the Taliban comply without further delay with the demand of the Security Council in paragraph 2 of resolution 1267 (1999) that requires the Taliban to turn over Usama bin Laden to appropriate authorities in a country where he has been indicted, or to appropriate authorities in a country where he will be returned to such a country, or to appropriate authorities in a country where he will be arrested and effectively brought to justice;

3. Demands further that the Taliban should act swiftly to close all camps where terrorists are trained within the territory under its control, and calls for the confirmation of such closures by the United Nations, inter alia, through information made available to the United Nations by Member States in accordance with paragraph 19 below and through such other means as are necessary to assure compliance with this resolution;

4. Reminds all States of their obligation to implement strictly the measures imposed by paragraph 4 of resolution 1267 (1999);

5. Decides that all States shall:

(a) Prevent the direct or indirect supply, sale and transfer to the territory of Afghanistan under Taliban control as designated by the Committee established pursuant to resolution 1267 (1999), hereinafter known as the Committee, by their nationals or from their territories, or using their flag vessels or aircraft, of arms and related materiel of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned;

(b) Prevent the direct or indirect sale, supply and transfer to the territory of Afghanistan under Taliban control, as designated by the Committee, by their nationals or from their territories, of technical advice, assistance, or training related to the military activities of the armed personnel under the control of the Taliban;

(c) Withdraw any of their officials, agents, advisers, and military personnel employed by contract or other arrangement present in Afghanistan to advise the Taliban on military or related security matters, and urge other nationals in this context to leave the country;

6. Decides that the measures imposed by paragraph 5 above shall not apply to supplies of non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance or training, as approved in advance by the Committee, and affirms that the measures imposed by paragraph 5 above do not apply to protective clothing, including flak jackets and military helmets, exported to Afghanistan by United Nations personnel, representatives of the media, and humanitarian workers for their personal use only;

7. Urges all States that maintain diplomatic relations with the Taliban to reduce significantly the number and level of the staff at Taliban missions and posts and restrict or control the movement within their territory of all such staff who remain; in the case of Taliban missions to international organizations, the host State may, as it deems necessary, consult the organization concerned on the measures required to implement this paragraph;

8. Decides that all States shall take further measures:

(a) To close immediately and completely all Taliban offices in their territories;

(b) To close immediately all offices of Ariana Afghan Airlines in their territories;

(c) To freeze without delay funds and other financial assets of Usama bin Laden and individuals and entities associated with him as designated by the Committee, including those in the Al-Qaida organization, and including funds derived or generated from property owned or controlled directly or indirectly by Usama bin Laden and individuals and entities associated with him, and to ensure that neither they nor any other funds or financial resources are made available, by their nationals or by any persons within their territory, directly or indirectly for the benefit of Usama bin Laden, his associates or any entities owned or controlled, directly or indirectly, by Usama bin Laden or individuals and entities associated with him including the Al-Qaida organization and requests the Committee to maintain an updated list, based on information provided by States and regional organizations, of the individuals and entities designated as being associated with Usama bin Laden, including those in the Al-Qaida organization;

9. Demands that the Taliban, as well as others, halt all illegal drugs activities and work to virtually eliminate the illicit cultivation of opium poppy, the proceeds of which finance Taliban terrorist activities;

10. Decides that all States shall prevent the sale, supply or transfer, by their nationals or from their territories, of the chemical acetic anhydride to any person in the territory of Afghanistan under Taliban control as designated by the Committee or to any person for the purpose of

any activity carried on in, or operated from, the territory under Taliban control as designated by the Committee;

11. Decides also that all States are required to deny any aircraft permission to take off from, land in or over-fly their territories if that aircraft has taken off from, or is destined to land at, a place in the territory of Afghanistan designated by the Committee as being under Taliban control, unless the particular flight has been approved in advance by the Committee on the grounds of humanitarian need, including religious obligations such as the performance of the Hajj, or on the grounds that the flight promotes discussion of a peaceful resolution of the conflict in Afghanistan, or is likely to promote Taliban compliance with this resolution or with resolution 1267 (1999);

12. Decides further that the Committee shall maintain a list of approved organizations and governmental relief agencies which are providing humanitarian assistance to Afghanistan, including the United Nations and its agencies, governmental relief agencies providing humanitarian assistance, the International Committee of the Red Cross and non-governmental organizations as appropriate, that the prohibition imposed by paragraph 11 above shall not apply to humanitarian flights operated by, or on behalf of, organizations and governmental relief agencies on the list approved by the Committee, that the Committee shall keep the list under regular review, adding new organizations and governmental relief agencies as appropriate and that the Committee shall remove organizations and governmental agencies from the list if it decides that they are operating, or are likely to operate, flights for other than humanitarian purposes, and shall notify such organizations and governmental agencies immediately that any flights operated by them, or on their behalf, are thereby subject to the provisions of paragraph 11 above;

13. Calls upon the Taliban to ensure the safe and unhindered access of relief personnel and aid to all those in need in the territory under their control, and underlines that the Taliban must provide guarantees for the safety, security and freedom of movement for United Nations and associated humanitarian relief personnel;

14. Urges States to take steps to restrict the entry into or transit through their territory of all senior officials of the rank of Deputy Minister or higher in the Taliban, the equivalent rank of armed personnel under the control of the Taliban, and other senior advisers and dignitaries of the Taliban, unless those officials are travelling for humanitarian purposes, including religious obligation such as the performance of the Hajj, or where the travel promotes discussion of a peaceful resolution of the conflict in Afghanistan or involves compliance with this resolution or resolution 1267 (1999);

15. Requests the Secretary-General in consultation with the Committee:

(a) To appoint a committee of experts to make recommendations to the Council within sixty days of the adoption of this resolution regarding how the arms embargo and the closure of terrorist training camps demanded in paragraphs 3 and 5 above can be monitored, including inter alia the use of information obtained by Member States through their national means and provided by them to the Secretary- General;

(b) To consult with relevant Member States to put into effect the measures imposed by this resolution and resolution 1267 (1999) and report the results of such consultations to the Council;

(c) To report on the implementation of the existing measures, assess problems in enforcing these measures, make recommendations for strengthening enforcement, and evaluate actions of the Taliban to come into compliance;

(d) To review the humanitarian implications of the measures imposed by this resolution and resolution 1267 (1999), and to report back to the Council within 90 days of the adoption of this resolution with an assessment and recommendations, to report at regular intervals thereafter on any humanitarian implications and to present a comprehensive report on this issue and any recommendations no later than 30 days prior to the expiration of these measures;

16. Requests the Committee to fulfil its mandate by undertaking the following tasks in addition to those set out in resolution 1267 (1999):

(a) To establish and maintain updated lists based on information provided by States, regional, and international organizations of all points of entry and landing areas for aircraft within the territory of Afghanistan under control by the Taliban and to notify Member States of the contents of such lists;

(b) To establish and maintain updated lists, based on information provided by States and regional organizations, of individuals and entities designated as being associated with Usama bin Laden, in accordance with paragraph 8 (c) above;

(c) To give consideration to, and decide upon, requests for the exceptions set out in paragraphs 6 and 11 above;

(d) To establish no later than one month after the adoption of this resolution and maintain an updated list of approved organizations and governmental relief agencies which are providing humanitarian assistance to Afghanistan, in accordance with paragraph 12 above;

(e) To make relevant information regarding implementation of these measures publicly available through appropriate media, including through the improved use of information technology;

(f) To consider, where and when appropriate, a visit to countries in the region by the Chairman of the Committee and such other members as may be required to enhance the full and effective implementation of the measures imposed by this resolution and resolution 1267 (1999) with a view to urging States to comply with relevant Council resolutions;

(g) To make periodic reports to the Council on information submitted to it regarding this resolution and resolution 1267 (1999), including possible violations of the measures reported to the Committee and recommendations for strengthening the effectiveness of these measures;

17. Calls upon all States and all international and regional organizations, including the United Nations and its specialized agencies, to act strictly in accordance with the provisions of this resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to the date of coming into force of the measures imposed by paragraphs 5, 8, 10 and 11 above;

18. Calls upon States to bring proceedings against persons and entities within their jurisdiction that violate the measures imposed by paragraphs 5, 8, 10 and 11 above and to impose appropriate penalties;

19. Calls upon all States to cooperate fully with the Committee in the fulfilment of its tasks, including supplying such information as may be required by the Committee in pursuance of this resolution;



20. Requests all States to report to the Committee within 30 days of the coming into force of the measures imposed by paragraphs 5, 8, 10 and 11 above on the steps they have taken with a view to effectively implementing this resolution;
21. Requests the Secretariat to submit for consideration by the Committee information received from Governments and public sources on possible violations of the measures imposed by paragraphs 5, 8, 10 and 11 above;
22. Decides that the measures imposed by paragraphs 5, 8, 10 and 11 above shall come into force at 00.01 Eastern Standard Time, one month after the adoption of this resolution;
23. Further decides that the measures imposed by paragraphs 5, 8, 10 and 11 above are established for twelve months and that, at the end of this period, the Council will decide whether the Taliban has complied with paragraphs 1, 2 and 3 above, and, accordingly, whether to extend these measures for a further period with the same conditions;
24. Decides if the Taliban comply with the conditions of paragraphs 1, 2 and 3 above, before the twelve-month period has elapsed, the Security Council shall terminate the measures imposed by paragraphs 5, 8, 10 and 11 above;
25. Expresses its readiness to consider the imposition of further measures, in accordance with its responsibility under the Charter of the United Nations, with the aim of achieving full implementation of this resolution and resolution 1267 (1999), inter alia, taking into account the impact assessment referred to in paragraph 15 (d) with a view to enhancing the effectiveness of sanctions and avoiding humanitarian consequences;
26. Decides to remain actively seized of the matter.

### **Appendix 3 – UN Security Council Resolution 1373 (2001)**

Adopted by the Security Council at its 4385th meeting, on 28 September 2001

The Security Council, Reaffirming its resolutions 1269 (1999) of 19 October 1999 and 1368 (2001) of 12 September 2001,

Reaffirming also its unequivocal condemnation of the terrorist attacks which took place in New York, Washington, D.C. and Pennsylvania on 11 September 2001, and expressing its determination to prevent all such acts,

Reaffirming further that such acts, like any act of international terrorism, constitute a threat to international peace and security,

Reaffirming the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations as reiterated in resolution 1368 (2001),

Reaffirming the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,

Deeply concerned by the increase, in various regions of the world, of acts of terrorism motivated by intolerance or extremism,

Calling on States to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions relating to terrorism,

Recognizing the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism,

Reaffirming the principle established by the General Assembly in its declaration of October 1970 (resolution 2625 (XXV)) and reiterated by the Security Council in its resolution 1189 (1998) of 13 August 1998, namely that every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts,

Acting under Chapter VII of the Charter of the United Nations,

Decides that all States shall:

- (a) Prevent and suppress the financing of terrorist acts;
- (b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;
- (c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;

(d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

2. Decides also that all States shall:

(a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;

(b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;

(c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;

(d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;

(e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;

(f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;

(g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;

3. Calls upon all States to:

(a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;

(b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;

(c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;

(d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;

(e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);

(f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts;

(g) Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists;

4. Notes with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard emphasizes the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security;

5. Declares that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations;

6. Decides to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and calls upon all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution;

7. Directs the Committee to delineate its tasks, submit a work programme within 30 days of the adoption of this resolution, and to consider the support it requires, in consultation with the Secretary-General;

8. Expresses its determination to take all necessary steps in order to ensure the full implementation of this resolution, in accordance with its responsibilities under the Charter;

9. Decides to remain seized of this matter.