

LORDS AMENDMENTS TO THE  
COUNTER-TERRORISM BILL

*[The page and line references are to HL Bill 65, the bill as first printed for the Lords.]*

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**Clause 1**

**1** Page 2, line 19, leave out subsection (4) and insert –

“( ) A constable has the same powers of seizure in relation to a document removed under this section as the constable would have if it had not been removed (and if anything discovered on examination after removal had been discovered without it having been removed).”

**Before Clause 14**

**2** Insert the following new Clause –

**“National guidelines on fingerprint and sample database**

- (1) The Secretary of State shall by regulations publish national guidelines for governmental agencies establishing –
  - (a) a procedure by which a person can request a statement of what information relating to fingerprints and samples is held on them or on a dependent;
  - (b) a procedure by which a person can request that such information held on them or a dependent is destroyed;
  - (c) the circumstances in which a request under paragraph (b) may be refused.
- (2) If a request made under subsection (1)(b) is refused under subsection (1)(c), the relevant agency shall write to the person setting out why such information will not be destroyed and when such circumstances as prevent it being destroyed may no longer apply.
- (3) In drawing up guidelines under subsection (1), the Secretary of State shall consult such bodies as he thinks appropriate.

- (4) Regulations under subsection (1) shall not be made until a draft copy is laid before, and approved by resolution of, both Houses of Parliament.”

**Before Clause 22**

3 Insert the following new Clause –

**“No extension of pre-charge detention**

For the avoidance of doubt, nothing in this Act allows the Secretary of State to extend the maximum period of pre-charge detention beyond 28 days.”

**Clause 22**

4 Leave out Clause 22

**Clause 23**

5 Leave out Clause 23

**Clause 24**

6 Leave out Clause 24

**Clause 25**

7 Leave out Clause 25

**Clause 26**

8 Leave out Clause 26

**Clause 27**

9 Leave out Clause 27

**Clause 28**

10 Leave out Clause 28

**Clause 29**

11 Leave out Clause 29

**Clause 30**

12 Leave out Clause 30

**Clause 31**

13 Leave out Clause 31

**Clause 32**

- 14 Leave out Clause 32

**Clause 33**

- 15 Leave out Clause 33

**Clause 34**

- 16 Page 22, line 35, leave out subsections (2) to (5) and insert –

- “( ) A judge of the Crown Court may authorise the questioning of a person about an offence –
- (a) after the person has been charged with the offence or been officially informed that they may be prosecuted for it, or
  - (b) after the person has been sent for trial for the offence, if the offence is a terrorism offence or it appears to the judge that the offence has a terrorist connection.
- ( ) The judge –
- (a) must specify the period during which questioning is authorised, and
  - (b) may impose such conditions as appear to be necessary in the interests of justice, which may include conditions as to the place where the questioning is to be carried out.
- ( ) The period during which questioning is authorised –
- (a) begins when questioning pursuant to the authorisation begins and runs continuously from that time (whether or not questioning continues), and
  - (b) must not exceed 48 hours.
- This is without prejudice to any application for a further authorisation under this section.
- ( ) Where the person is in prison or otherwise lawfully detained, the judge may authorise the person’s removal to another place and detention there for the purpose of being questioned.
- ( ) A judge must not authorise the questioning of a person under this section unless satisfied –
- (a) that further questioning of the person is necessary in the interests of justice,
  - (b) that the investigation for the purposes of which the further questioning is proposed is being conducted diligently and expeditiously, and
  - (c) that what is authorised will not interfere unduly with the preparation of the person’s defence to the charge in question or any other criminal charge.”

**Clause 35**

- 17 Page 23, line 44, leave out subsections (2) to (6) and insert –

- “( ) On the application of the prosecutor, a sheriff may authorise the questioning of a person about an offence –

- (a) after the person has been charged with the offence, or
  - (b) after the person has appeared on petition in respect of the offence,
- if the offence is a terrorism offence or it appears to the sheriff that the offence has a terrorist connection.

- ( ) The sheriff –
  - (a) must specify the period during which questioning is authorised, and
  - (b) may impose such conditions as appear to be necessary in the interests of justice, which may include conditions as to the place where the questioning is to be carried out.
- ( ) The period during which questioning is authorised –
  - (a) begins when questioning pursuant to the authorisation begins and runs continuously from that time (whether or not questioning continues), and
  - (b) must not exceed 48 hours.

This is without prejudice to any application for a further authorisation under this section.
- ( ) Where the person is in prison or otherwise lawfully detained, the sheriff may authorise the person’s removal to another place and detention there for the purpose of being questioned.
- ( ) A sheriff must not authorise the questioning of a person under this section unless satisfied –
  - (a) that further questioning of the person is necessary in the interests of justice,
  - (b) that the investigation for the purposes of which the further questioning is proposed is being conducted diligently and expeditiously, and
  - (c) that what is authorised will not interfere unduly with the preparation of the person’s defence to the charge in question or any other criminal charge.”

18 Page 24, line 24, leave out “subsection (2) or (3)” and insert “this section”

19 Page 24, line 25, at end insert “(or had appeared on petition)”

### Clause 36

20 Page 24, line 29, leave out subsections (2) to (4) and insert –

- “( ) A district judge (magistrates’ courts) may authorise the questioning of a person about an offence –
  - (a) after the person has been charged with the offence or been officially informed that they may be prosecuted for it, or
  - (b) after the person has been committed for trial for the offence,

if the offence is a terrorism offence.
- ( ) The judge –
  - (a) must specify the period during which questioning is authorised, and
  - (b) may impose such conditions as appear to the judge to be necessary in the interests of justice, which may include conditions as to the place where the questioning is to be carried out.

- ( ) The period during which questioning is authorised –
  - (a) begins when questioning pursuant to the authorisation begins and runs continuously from that time (whether or not questioning continues), and
  - (b) must not exceed 48 hours.This is without prejudice to any application for a further authorisation under this section.
- ( ) Where the person is in prison or otherwise lawfully detained, the judge may authorise the person’s removal to another place and detention there for the purpose of being questioned.
- ( ) A district judge (magistrates’ courts) must not authorise the questioning of a person under this section unless satisfied –
  - (a) that further questioning of the person is necessary in the interests of justice,
  - (b) that the investigation for the purposes of which the further questioning is proposed is being conducted diligently and expeditiously, and
  - (c) that what is authorised will not interfere unduly with the preparation of the person’s defence to the charge in question or any other criminal charge.”

21 Page 25, line 14, leave out “sent” and insert “committed”

#### Clause 37

22 Page 25, leave out line 30

23 Page 25, line 37, leave out “An order or” and insert “A”

24 Page 25, line 42, leave out subsection (6)

#### Clause 39

25 Page 27, line 14, leave out subsection (2) and insert –

“(2) Any ancillary offence in relation to an offence listed in subsection (1) is a terrorism offence for the purposes of sections 34 to 36.”

26 Page 27, line 22, leave out “or (2)”

#### Clause 40

27 Page 28, line 17, leave out subsection (3)

28 Page 28, line 25, leave out “or (3)”

29 Page 28, line 28, leave out “or (3)”

#### After Clause 43

30 Insert the following new Clause –

**“Sentences for offences with a terrorist connection: armed forces**

- (1) This section applies where a service court is considering for the purposes of sentence the seriousness of a service offence as respects which the corresponding civil offence is an offence specified in Schedule 3.
- (2) If having regard to the material before it for the purposes of sentencing it appears to the court that the offence has or may have a terrorist connection, the court must determine whether that is the case.
- (3) For that purpose the court may hear evidence, and must take account of any representations made by the prosecution and the defence, as in the case of any other matter relevant for the purposes of sentence.
- (4) If the court determines that the offence has a terrorist connection, the court—
  - (a) must treat that fact as an aggravating factor, and
  - (b) must state in open court that the offence was so aggravated.
- (5) This section has effect in relation only to offences committed on or after the day it comes into force.”

**Clause 46**

31 Page 31, leave out lines 33 to 40 and insert—

“(3) This section applies to any ancillary offence (as defined in section (*Meaning of “ancillary offence”*) of the Counter-Terrorism Act 2008) in relation to an offence listed in subsection (2).”

32 Page 32, line 3, leave out “or (3)”

33 Page 32, line 3, at end insert—

“(6) An order adding an offence to subsection (2) applies only in relation to offences committed after the order comes into force.”

**Clause 51**

34 Page 36, line 35, at end insert—

“(3) Schedule (*Notification requirements: application to service offences*) provides for the application of this Part to service offences and related matters.”

**Clause 52**

35 Page 37, line 27, leave out subsection (2) and insert—

“(2) This Part also applies to any ancillary offence in relation to an offence listed in subsection (1).”

36 Page 37, line 35, leave out “or (2)”

37 Page 37, line 41, leave out subsection (7) and insert—

“(7) Where an offence is removed from the list, a person subject to the notification requirements by reason of that offence being listed (and who is not otherwise subject to those requirements) ceases to be subject to them when the order comes into force.”

**Clause 53**

- 38 Page 38, line 2, leave out subsection (1) and insert –
- “( ) This Part applies to –
- (a) an offence as to which a court has determined under section 42 (sentences for offences with a terrorist connection: England and Wales) that the offence has a terrorist connection, and
  - (b) an offence in relation to which section 43 applies (sentences for offences with terrorist connection: Scotland).”
- 39 Page 38, line 9, after “determination” insert “as is mentioned in subsection (1)(a)”
- 40 Page 38, line 10, at end insert –
- “( ) If the determination is set aside on appeal, the notification requirements are treated as never having applied to that person in respect of the offence.”
- 41 Page 38, line 11, leave out subsection (3) and insert –
- “(3) Where an order is made under section 44 removing an offence from the list in Schedule 3, a person subject to the notification requirements by reason of that offence being so listed (and who is not otherwise subject to those requirements) ceases to be subject to them when the order comes into force.”

**Clause 54**

- 42 Leave out Clause 54

**Clause 55**

- 43 Page 38, line 32, leave out “one of those listed in section 52” and insert “on the commencement of this Part within section 52(1) or (2)”
- 44 Page 38, line 40, leave out “has been released” and insert “is”
- 45 Page 38, line 40, leave out “whole or” and insert “custodial”

**Before Clause 56**

- 46 Insert the following new Clause –

**“Persons to whom the notification requirements apply**

The notification requirements apply to a person who –

- (a) is aged 16 or over at the time of being dealt with for an offence to which this Part applies, and
- (b) is made subject in respect of the offence to a sentence or order within section 56 (sentences or orders triggering notification requirements).”

**Clause 56**

- 47 Page 39, line 18, after “imprisonment” insert “or custody”
- 48 Page 39, line 19, after “imprisonment” insert “or detention in a young offender institution”

- 49 Page 39, line 20, after “imprisonment” insert “or detention in a young offender institution”
- 50 Page 39, line 22, after “detention” insert “for life or”
- 51 Page 39, line 38, leave out subsection (2)
- 52 Page 40, line 3, leave out sub-paragraphs (i) to (viii) and insert –
- “(i) imprisonment or detention in a young offenders institution for life,
  - (ii) imprisonment or detention in a young offenders institution for a term of 12 months or more,
  - (iii) an order for lifelong restriction under section 210F of the Criminal Procedure (Scotland) Act 1995 (c. 46),
  - (iv) detention without limit of time under section 205(2) of that Act (punishment for murder for offenders under 18), or
  - (v) detention for a period of 12 months or more under section 208 of that Act (detention of children convicted on indictment); or”
- 53 Page 40, line 34, leave out “13(3) and (4)” and insert “13”
- 54 Page 40, line 35, at end insert –
- “( ) an extended custodial sentence under Article 14(5) of that Order (offenders under 21 convicted of certain offences),”
- 55 Page 40, line 43, after “more” insert “(other serious offences committed by a child)”
- 56 Page 40, line 48, leave out “under a disability” and insert “unfit to be tried”
- 57 Page 41, line 1, leave out subsection (5) and insert –
- “(5) The references in this section to an offence carrying a maximum term of imprisonment of 12 months or more –
    - (a) are to an offence carrying such a maximum term in the case of a person who has attained the age of 21 (18 in relation to England and Wales), and
    - (b) include an offence carrying in the case of such a person a maximum term of life imprisonment and an offence for which in the case of such a person the sentence is fixed by law as life imprisonment.  - (6) In relation to any time before the coming into force of section 61 of the Criminal Justice and Court Services Act 2000 (c. 43) subsection (5)(a) above has effect with the omission of the words “(18 in relation to England and Wales)”.”

#### Clause 58

- 58 Page 42, line 1, at end insert “, or
- (d) detained under the Immigration Acts.”
- 59 Page 42, line 12, leave out “has been released” and insert “is”
- 60 Page 42, line 12, leave out “whole or” and insert “custodial”

#### Clause 59

- 61 Page 42, line 34, at end insert “, or



(d) from detention under the Immigration Acts,”

62 Page 43, line 7, at end insert “, or

(d) detained under the Immigration Acts.”

63 Page 43, line 9, leave out “or section 60 (periodic notification)” and insert “, section 60 (periodic notification) or section (*Notification on return after absence from UK*) (notification on return after absence from UK).”

#### Clause 60

64 Page 43, line 18, at end insert “or

( ) section (*Notification on return after absence from UK*) (notification on return after absence from UK),”

65 Page 43, line 20, leave out “This” and insert “Subsection (1)”

66 Page 43, line 20, leave out “subsection (1)” and insert “that subsection”

67 Page 43, line 24, at end insert “, or

(d) detained under the Immigration Acts.”

#### Clause 61

68 Page 43, line 31, at end insert “, or

( ) section (*Notification on return after absence from UK*) (notification on return after absence from UK).”

#### Clause 62

69 Page 44, line 17, leave out from “court” to end of line 19 and insert “of trial was situated.”

70 Page 44, line 19, at end insert –

“(1A) In subsection (1)(c) “the court of trial” means –

(a) the court by or before which the conviction or finding was made by virtue of which the notification requirements apply to the person, or

(b) if that conviction or finding was one substituted on an appeal or reference, the court by or before which the proceedings were taken from which the appeal or reference was brought.”

#### Clause 64

71 Page 45, line 3, leave out subsections (1) to (3) and insert –

“(1) The period for which the notification requirements apply is –

(a) 30 years in the case of a person who –

(i) is aged 18 or over at the time of conviction for the offence, and

(ii) receives in respect of the offence a sentence within subsection (2);

(b) 15 years in the case of a person who –

(i) is aged 18 or over at the time of conviction for the offence, and

- (ii) receives in respect of the offence a sentence within subsection (3);
  - (c) 10 years in any other case.
- (2) The sentences in respect of which a 30 year period applies are –
- (a) in England and Wales –
    - (i) imprisonment or custody for life,
    - (ii) imprisonment or detention in a young offender institution for a term of 10 years or more,
    - (iii) imprisonment or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 (c. 44),
    - (iv) detention during Her Majesty’s pleasure;
  - (b) in Scotland –
    - (i) imprisonment or detention in a young offenders institution for life,
    - (ii) imprisonment or detention in a young offenders institution for a term of 10 years or more,
    - (iii) an order for lifelong restriction under section 210F of the Criminal Procedure (Scotland) Act 1995 (c. 46);
  - (c) in Northern Ireland –
    - (i) imprisonment for life,
    - (ii) imprisonment for a term of 10 years or more,
    - (iii) an indeterminate custodial sentence under Article 13 of the Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)),
    - (iv) an extended custodial sentence for a term of 10 years or more under Article 14(5) of that Order (offenders under 21 convicted of certain offences),
    - (v) detention during the pleasure of the Secretary of State under Article 45(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)).
- (3) The sentences in respect of which a 15 year period applies are –
- (a) in England and Wales, imprisonment or detention in a young offender institution for a term of 5 years or more but less than 10 years;
  - (b) in Scotland, imprisonment or detention in a young offenders institution for a term of 5 years or more but less than 10 years;
  - (c) in Northern Ireland –
    - (i) imprisonment for a term of 5 years or more but less than 10 years,
    - (ii) an extended custodial sentence for a term of 5 years or more but less than 10 years under Article 14(5) of that Order (offenders under 21 convicted of certain offences).”

72 Page 46, line 10, leave out “insanity,”

73 Page 46, line 28, at end insert “, or

(d) detained under the Immigration Acts.”

#### Clause 65

74 Page 46, line 38, after “Kingdom)” insert “, or

section (*Notification on return after absence from UK*) (notification on return after absence from UK)”

75 Page 46, line 44, after “Kingdom),” insert “or section (*Notification on return after absence from UK*) (notification on return after absence from UK),”

76 Page 47, line 18, after “Kingdom),” insert “or section (*Notification on return after absence from UK*) (notification on return after absence from UK),”

#### After Clause 65

77 Insert the following new Clause –

##### “Effect of absence abroad

- (1) If a person to whom the notification requirements apply is absent from the United Kingdom for any period the following provisions apply.
- (2) During the period of absence the period for which the notification requirements apply continues to run.
- (3) The period of absence does not affect the obligation under section 58 (initial notification).  
This is subject to subsection (4).
- (4) Section 58 does not apply if –
  - (a) the period of absence begins before the end of the period within which notification must be made under that section, and
  - (b) the person’s absence results from the person’s removal from the United Kingdom.
- (5) Section 59 (notification of changes) –
  - (a) applies in relation to an event that occurs before the period of absence, but
  - (b) does not apply in relation to an event that occurs during the period of absence.Paragraph (a) is subject to subsection (6).
- (6) Section 59 does not apply in relation to an event that occurs before the period of absence if –
  - (a) the period of absence begins before the end of the period within which notification must be made under that section, and
  - (b) the person’s absence results from the person’s removal from the United Kingdom.
- (7) Section 60 (periodic re-notification) does not apply if the period referred to in subsection (1) of that section ends during the period of absence.
- (8) Section 64(7) (disregard of period of custody etc) applies in relation to the period of absence as if it referred to any period when the person was –
  - (a) remanded in or committed to custody by an order of a court outside the United Kingdom,
  - (b) serving a sentence of imprisonment or detention imposed by such a court,

- (c) detained in a hospital pursuant to an order of such a court that is equivalent to a hospital order, or
  - (d) subject to a form of detention outside the United Kingdom that is equivalent to detention under the Immigration Acts.
- (9) References in this section and section (*Notification on return after absence from the United Kingdom*) to a person's removal from the United Kingdom include—
- (a) the person's removal from the United Kingdom in accordance with the Immigration Acts,
  - (b) the person's extradition from the United Kingdom, or
  - (c) the person's transfer from the United Kingdom to another country pursuant to a warrant under section 1 of the Repatriation of Prisoners Act 1984 (c. 47)."

78 Insert the following new Clause—

**“Notification on return after absence from UK**

- (1) This section applies if, before the end of the period for which the notification requirements apply, a person to whom the requirements apply returns to the United Kingdom after a period of absence and—
  - (a) the person was not required to make a notification under section 58 (initial notification),
  - (b) there has been a change to any of the information last notified to the police in accordance with—
    - (i) section 58,
    - (ii) section 59 (notification of changes),
    - (iii) section 60 (periodic re-notification), or
    - (iv) this section, or
  - (c) the period referred to in section 60(1) (period after which re-notification required) ended during the period of absence.
- (2) The person must notify or (as the case may be) re-notify to the police the information mentioned in section 58(2) within the period of three days beginning with the day of return.
- (3) In determining the period within which notification is to be made under this section, there shall be disregarded any time when the person is—
  - (a) remanded in or committed to custody by an order of a court,
  - (b) serving a sentence of imprisonment or detention,
  - (c) detained in a hospital, or
  - (d) detained under the Immigration Acts.
- (4) This section does not apply if—
  - (a) the person subsequently leaves the United Kingdom,
  - (b) the period of absence begins before the end of the period within which notification must be made under this section, and
  - (c) the person's absence results from the person's removal from the United Kingdom.
- (5) The obligation under this section does not affect any obligation to notify information under section 63(3) (regulations requiring notification of return etc).”

**After Clause 67**

79 Insert the following new Clause –

**“Application of Part to service offences and related matters**

Schedule (*Notification requirements: application to service offences*) makes provision for the application of this Part to service offences and related matters.”

**Clause 68**

80 Page 48, line 14, leave out from “order” to end of line 21 and insert “means –

- (a) a hospital order within the meaning of the Mental Health Act 1983 (c. 20);
- (b) an order under Part 6 of the Criminal Procedure (Scotland) Act 1995 (c. 46); or
- (c) a hospital order within the meaning of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4));”

**After Clause 68**

81 Insert the following new Clause –

**“References to a person being “dealt with” for an offence**

- (1) References in this Part to a person being dealt with for or in respect of an offence are to their being sentenced, or made subject to a hospital order, in respect of the offence.

References in this Part to an offence being dealt with are to a person being dealt with in respect of the offence.

- (2) Subject to the following provisions of this section, references in this Part to the time at which a person is dealt with for an offence are to the time at which they are first dealt with –

- (a) in England and Wales, by a magistrates’ court or the Crown Court;
- (b) in Scotland, by a sheriff or by the High Court of Justiciary;
- (c) in Northern Ireland, by the county court.

This is referred to below as “the original decision”.

- (3) Where the original decision is varied (on appeal or otherwise), then –

- (a) if the result is that the conditions for application of the notification requirements to a person in respect of an offence cease to be met (and paragraph (c) below does not apply), the notification requirements are treated as never having applied to that person in respect of that offence;
- (b) if the result is that the conditions for application of the notification requirements to a person in respect of an offence are met where they were not previously met (and paragraph (c) below does not apply) –
  - (i) the person is treated as dealt with for the offence when the variation takes place, and
  - (ii) the notification requirements apply accordingly;
- (c) if –

- (i) a conviction of, or finding in relation to, a different offence is substituted, and
    - (ii) the conditions for application of the notification requirements were met in respect of the original offence and are also met in respect of the substituted offence,

the person is treated as if they had been dealt with for the substituted offence at the time of the original decision;
  - (d) if the sentence is varied so as to become one by virtue of which the notification requirements would apply for a different period, the period for which those requirements apply shall be determined as if the sentence as varied had been imposed at the time of the original decision;
  - (e) in any other case, the variation is disregarded.
- (4) For the purposes of—
- (a) section 52(5) (effect of order adding offence to list of terrorism offences),
  - (b) section (*Persons to whom the notification requirements apply*)(a) or paragraph 4(a) of Schedule (*Notification requirements: application to service offences*) (persons subject to notification requirements: age when dealt with for offence),
  - (c) section 57(2) or paragraph 6(2) of Schedule (*Notification requirements: application to service offences*) (effect of order reducing term or period triggering notification requirements),
  - (d) section 64(5)(b) or paragraph 7(5)(b) of Schedule (*Notification requirements: application to service offences*) (period for which notification requirements apply: ending of period resulting from finding of disability etc where person subsequently tried), and
  - (e) paragraph 2(3) of Schedule 6 (conditions for making foreign travel restriction order: behaviour since offence dealt with),
- a person is treated as dealt with at the time of the original decision and any subsequent variation of the decision is disregarded.
- (5) For the purposes of—
- (a) section 55(1) and (2) or paragraph 3(1) and (2) of Schedule (*Notification requirements: application to service offences*) (application of Part to offences dealt with before commencement),
  - (b) paragraph 2(4) of Schedule 6 (conditions for making foreign travel restriction order where offence dealt with before commencement),
- a person is dealt with for an offence before the commencement of this Part if the time of the original decision falls before the commencement of this Part.
- Where in such a case subsection (3) above applies for the purposes of any provision of this Part, that subsection has effect as if the provisions of this Part had been in force at all material times.
- (6) In section 58(6) (adaptation of initial notification requirements in case of offence dealt with before commencement)—
- (a) the reference in the opening words to an offence dealt with before the commencement of this Part is to an offence where the time of the original decision falls before the commencement of this Part, and
  - (b) the reference in the closing words to when the offence is dealt with has the same meaning as in subsection (1) of that section.

- (7) References in this section to the variation of a decision include any proceedings by which the decision is altered, set aside or quashed, or in which a further decision is come to following the setting aside or quashing of the decision.”

82 Insert the following new Clause –

**“Terrorist financing and money laundering**

Schedule (*Terrorist financing and money laundering*) makes provision conferring powers on the Treasury to act against terrorist financing, money laundering and certain other activities.”

**Before Clause 69**

83 Insert the following new Clause –

**“Application to set aside financial restrictions decision**

- (1) This section applies to any decision of the Treasury in connection with the exercise of any of their functions under –
- (a) the UN terrorism orders,
  - (b) Part 2 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (freezing orders), or
  - (c) Schedule (*Terrorist financing and money laundering*) to this Act (terrorist financing, money laundering and certain other activities: financial restrictions).
- (2) Any person affected by the decision may apply to the High Court or, in Scotland, the Court of Session to set aside the decision.
- (3) In determining whether the decision should be set aside the court shall apply the principles applicable on an application for judicial review.
- (4) If the court decides that a decision should be set aside it may make any such order, or give any such relief, as may be made or given in proceedings for judicial review.
- (5) Without prejudice to the generality of subsection (4), if the court sets aside a decision of the Treasury –
- (a) to give a direction under any of the UN terrorism orders,
  - (b) to make a freezing order under Part 2 of the Anti-terrorism, Crime and Security Act 2001 (c. 24), or
  - (c) to give a direction or make an order under Schedule (*Terrorist financing and money laundering*) to this Act,
- the court must quash the relevant direction or order.
- (6) This section applies whether the decision of the Treasury was made before or after the commencement of this section.
- (7) After the commencement of this section an application to set aside a decision of the Treasury to which this section applies must be made under this section.
- (8) This section does not apply to any decision of the Treasury to make an order under paragraph 8 or 28(6) of Schedule (*Terrorist financing and money laundering*) to this Act.

84 Insert the following new Clause—

**“UN terrorism orders**

- (1) For the purposes of section (*Application to set aside financial restrictions decision*) the UN terrorism orders are—
  - (a) the Terrorism (United Nations Measures) Order 2001 (S.I. 2001/3365);
  - (b) the Al-Qa’ida and Taliban (United Nations Measures) Order 2002 (S.I. 2002/111);
  - (c) the Terrorism (United Nations Measures) Order 2006 (S.I. 2006/2657);
  - (d) the Al-Qaida and Taliban (United Nations Measures) Order 2006 (S.I. 2006/2952).
- (2) The Treasury may by order amend subsection (1) by—
  - (a) adding other Orders in Council made under section 1 of the United Nations Act 1946 (c. 45),
  - (b) providing that a reference to a specified Order in Council is to that order as amended by a further Order in Council (made after the passing of this Act), or
  - (c) removing an Order in Council.
- (3) An order under subsection (2) is subject to negative resolution procedure.”

**Clause 69**

85 Page 48, line 38, leave out “asset freezing” and insert “financial restrictions”

86 Page 48, line 39, leave out “to set aside an asset freezing decision” and insert “under section (*Application to set aside financial restrictions decision*) or on a claim arising from any matter to which such an application relates”.

87 Page 48, line 40, leave out from beginning to end of line 21 on page 49

**Clause 70**

88 Page 49, line 25, leave out “asset freezing” and insert “financial restrictions”

89 Page 49, line 26, leave out “asset freezing” and insert “financial restrictions”

**Clause 71**

90 Page 50, line 11, leave out “asset freezing” and insert “financial restrictions”

91 Page 50, line 12, leave out “asset freezing” and insert “financial restrictions”

**Clause 72**

92 Page 51, line 16, leave out “asset freezing” and insert “financial restrictions”

93 Page 51, line 17, leave out “asset freezing” and insert “financial restrictions”

94 Page 51, line 25, leave out “asset freezing” and insert “financial restrictions”

95 Page 51, line 28, leave out “asset freezing” and insert “financial restrictions”

96 Page 51, line 31, leave out “asset freezing” and insert “financial restrictions”



**Clause 73**

97 Page 52, line 9, leave out “asset freezing” and insert “financial restrictions”

**After Clause 73**

98 Insert the following new Clause –

**“Qualification of duty to give reasons**

In paragraph 11 of Schedule 3 to the Anti-terrorism, Crime and Security Act 2001 (c. 24) (Treasury’s duty to give reason why person is specified in freezing order), make the existing provision sub-paragraph (1) and after it insert –

“(2) Sub-paragraph (1) does not apply if, or to the extent that, particulars of the reason would not be required to be disclosed to the applicant in proceedings to set aside the freezing order.”.

**Clause 74**

99 Page 52, line 25, leave out “asset freezing” and insert “financial restrictions”

**Clause 76**

100 Page 53, leave out line 26

101 Page 53, line 27, leave out “asset freezing” and insert “financial restrictions”

102 Page 53, leave out line 32

**Clause 77**

103 Leave out Clause 77

**Clause 78**

104 Leave out Clause 78

**Clause 79**

105 Leave out Clause 79

**After Clause 80**

106 Insert the following new Clause –

**“Inquests: intercept evidence**

(1) In section 18 of the Regulation of Investigatory Powers Act 2000 (c. 23) (exceptions to section 17), after subsection (7)(c) insert –

“(d) a disclosure to a coroner or to a person appointed as counsel to an inquest or to members of a jury or to any properly interested person where –

(i) the coroner holding the inquest is a judge of the High Court; and

- (ii) the coroner has ordered the disclosure to be made to the coroner alone or (as the case may be) to the coroner and the person appointed as counsel to the inquest or to members of a jury or to any properly interested person.”
- (2) After subsection (8A) insert—
  - “(8B) A coroner shall not order a disclosure under subsection (7)(d) except where the coroner is satisfied that the exceptional circumstances of the case make the disclosure essential to enable the matters that are required to be ascertained by the inquest to be ascertained.”
- (3) After subsection (11) insert—
  - “(11A) References in this section to a coroner apply only where the coroner is a judge of the High Court.”
- (4) This section has effect in relation to inquests that have begun, but have not been concluded, before the day on which it comes into force as well as to inquests beginning on or after that day.”

#### **Clause 81**

107 Leave out Clause 81

#### **Clause 85**

108 Page 62, leave out lines 5 to 7 and insert—

- “(b) other premises to which the controlled person is required to grant access in accordance with an obligation imposed by or under the control order;
- (c) any premises—
  - (i) to which the controlled person has previously been required to grant access in accordance with an obligation imposed by or under a control order, and
  - (ii) with which there is reason to believe that the controlled person is or was recently connected.”

109 Page 62, leave out lines 34 to 36 and insert—

- “(b) other premises to which the controlled person is required to grant access in accordance with an obligation imposed by or under the control order;
- (c) any premises—
  - (i) to which the controlled person has previously been required to grant access in accordance with an obligation imposed by or under a control order, and
  - (ii) with which there is reason to believe that the controlled person is or was recently connected.”

#### **After Clause 99**

110 Insert the following new Clause—

**“Meaning of “ancillary offence”**

- (1) In this Act “ancillary offence”, in relation to an offence, means any of the following—
  - (a) aiding, abetting, counselling or procuring the commission of the offence (or, in Scotland, being art and part in the commission of the offence);
  - (b) an offence under Part 2 of the Serious Crime Act 2007 (c. 27) (encouraging or assisting crime) in relation to the offence (or, in Scotland, inciting a person to commit the offence);
  - (c) attempting or conspiring to commit the offence.
- (2) In subsection (1)(b) the reference to an offence under Part 2 of the Serious Crime Act 2007 (c. 27) includes, in relation to times before the commencement of that Part, an offence of incitement under the law of England and Wales or Northern Ireland.”

111 Insert the following new Clause—

**“Meaning of “service court” and “service offence”**

- (1) In this Act “service court” means the Court Martial, the Service Civilian Court or the Court Martial Appeal Court.
- (2) Until the commencement of the relevant provisions of the Armed Forces Act 2006 (c. 52), the following is substituted for subsection (1)—
 

“(1) In this Act “service court” means—

  - (a) a court-martial constituted under the Army Act 1955 (3 & 4 Eliz. 2 c. 18), the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or the Naval Discipline Act 1957 (c. 53);
  - (b) the Courts-Martial Appeal Court; or
  - (c) a Standing Civilian Court.”.
- (3) In this Act “service offence” means an offence under—
  - (a) section 42 of the Armed Forces Act 2006 (c. 52),
  - (b) section 70 of the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19), or
  - (c) section 42 of the Naval Discipline Act 1957 (c. 53).
- (4) References in this Act to the “corresponding civil offence” in relation to a service offence are—
  - (a) in relation to an offence under section 42 of the Armed Forces Act 2006 (c. 52), to the corresponding offence under the law of England and Wales within the meaning of that section;
  - (b) in relation to an offence under section 70 of the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19), to the corresponding civil offence within the meaning of that Act;
  - (c) in relation to an offence under section 42 of the Naval Discipline Act 1957 (c. 53), to the civil offence within the meaning of that section.”
- (5) Section 48 of the Armed Forces Act 2006 (c. 52) (supplementary provisions relating to ancillary service offences) applies for the purposes of subsection (4)(a) above as it applies for the purposes of the provisions of that Act referred to in subsection (3)(b) of that section.”

**Clause 103**

112 Page 70, line 14, after “repealed” insert “or revoked”

**Clause 104**

113 Page 70, line 19, leave out from beginning to “into” and insert “Section (*Terrorist financing and money laundering*) and Schedule (*Terrorist financing and money laundering*) (terrorist financing and money laundering) and Part 5 (financial restrictions proceedings) come”

**Clause 105**

114 Page 70, line 37, at end insert –

“( ) Nothing in this section shall be read as restricting the application of any provision of this Act in relation to service courts or service offences.”

**Schedule 2**

115 Leave out Schedule 2

**Schedule 3**

116 Page 82, line 2, leave out from beginning to end of line 8 and insert –

“Any ancillary offence in relation to an offence specified in this Schedule.”

**Schedule 5**

117 Page 85, line 43, at end insert –

“( ) This condition is not met if there was a flagrant denial of the person’s right to a fair trial.”

118 Page 86, line 23, leave out from “made” to end of line 24 and insert “to the High Court”

119 Page 86, line 31, leave out from “made” to end of line 41 and insert “to the Court of Session”

120 Page 87, line 5, leave out from “made” to end of line 7 and insert “to the High Court”

121 Page 87, line 9, leave out paragraphs 7 to 9

122 Page 87, line 22, leave out from beginning to end of line 26 and insert –

*“Adaptation of provisions of this Part in relation to foreign proceedings*

11 The provisions of this Part have effect with the following adaptations in relation to foreign proceedings and cases where the notification requirements apply because a notification order has been made –

- (a) in section (*References to a person being “dealt with” for an offence*)(1) (references to dealing with an offence) for “being sentenced, or made subject to a hospital order” substitute “being made subject

by the foreign court to a sentence or order within paragraph 3(2)(a) or (b) of Schedule 5”;

- (b) in section (*References to a person being “dealt with” for an offence*)(2) (references to time when person dealt with for an offence) for paragraphs (a) to (c) substitute “by the foreign court of first instance”;

- 123 Page 87, line 30, leave out from “reference” to “shall” in line 32 and insert “in subsection (1)(c) to the court of trial”

### Schedule 6

- 124 Page 90, line 1, after “travel” insert “restriction”

- 125 Page 92, line 18, leave out from “excuse” to end of line 19 and insert “ –  
 (a) does anything they are prohibited from doing by a foreign travel restriction order, or  
 (b) fails to comply with a requirement imposed on them by such an order.”

### After Schedule 6

- 126 Insert the following new Schedule –

#### “NOTIFICATION REQUIREMENTS: APPLICATION TO SERVICES OFFENCES

##### *Service offences to which this Part applies: terrorism offences*

- 1 This Part applies to a service offence as respects which the corresponding civil offence is an offence within section 52(1) or (2) (offences to which this Part applies: terrorism offences).

##### *Service offences to which this Part applies: offences having a terrorist connection*

- 2 (1) This Part applies to a service offence as to which the service court dealing with the offence has determined in accordance with section (*Sentences for offences with a terrorist connection: armed forces*) that the offence has a terrorist connection.
- (2) A person to whom the notification requirements apply by virtue of such a determination may appeal against it to the same court, and subject to the same conditions, as an appeal against sentence.
- (3) If the determination is set aside on appeal, the notification requirements are treated as never having applied to that person in respect of the offence.

##### *Service offences dealt with before commencement*

- 3 (1) This Part applies to a person dealt with for a service offence before the commencement of this Part only if –
- (a) the corresponding civil offence is on the commencement of this Part within section 52(1) or (2) (offences to which this Part applies: terrorism offences), and
- (b) immediately before the commencement of this Part the person –

- (i) is imprisoned or detained in pursuance of the sentence or other order made in respect of the offence,
  - (ii) would be so imprisoned or detained but for being unlawfully at large, absent without leave, on temporary leave or leave of absence, or released from custody (or on bail) pending an appeal, or
  - (iii) is on licence having served the custodial part of a sentence of imprisonment in respect of the offence.
- (2) In relation to a person dealt with for a service offence before the commencement of this Part, any reference in this Schedule to a sentence, order or finding under a specified statutory provision includes a sentence or order under any corresponding earlier statutory provision.

*Service offences: persons to whom notification requirements apply*

- 4 The notification requirements apply to a person who—
- (a) is aged 16 or over at the time of being dealt with for a service offence to which this Part applies, and
  - (b) is made subject in respect of the offence to a sentence or order within paragraph 5 (sentences or orders triggering notification requirements).

*Service offences: sentences or orders triggering notification requirements*

- 5 (1) The notification requirements apply to a person who—
- (a) has been convicted of a service offence to which this Part applies and sentenced in respect of the offence to—
    - (i) imprisonment or custody for life,
    - (ii) imprisonment or custodial order for a term of 12 months or more,
    - (iii) imprisonment or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 (c. 44),
    - (iv) detention for life or for a period of 12 months or more under section 71A(4) of the Army Act 1955 or the Air Force Act 1955, section 43A(4) of the Naval Discipline Act 1957 or section 209 of the Armed Forces Act 2006 (c. 52),
    - (v) detention and training (and supervision) under section 211 of that Act, where the term of the order under that section is 12 months or more,
    - (vi) detention for public protection under section 226 of the Criminal Justice Act 2003 (c. 44), or
    - (vii) detention during Her Majesty's pleasure; or
  - (b) has been—
    - (i) convicted of a service offence to which this Part applies carrying a maximum term of imprisonment of 12 months or more,
    - (ii) found not guilty by reason of insanity of such an offence, or
    - (iii) found to be unfit to stand trial and to have done the act charged against them in respect of such an offence, and made subject in respect of the offence to a hospital order.

- (2) The reference in sub-paragraph (1)(b)(i) to an offence carrying a maximum term of imprisonment of 12 months or more—
  - (a) is to an offence carrying such a maximum term in the case of a person who has attained the age of 18 (or 21, as respects any time before the coming into force of section 61 of the Criminal Justice and Court Services Act 2000 (c. 43)), and
  - (b) includes an offence carrying in the case of such a person a maximum term of life imprisonment and an offence for which in the case of such a person the sentence is fixed by law as life imprisonment.

*Service offences: power to amend specified terms or periods of imprisonment or detention*

- 6 (1) The Secretary of State may by order amend the provisions of paragraph 5 referring to a specified term or period of imprisonment or detention.
- (2) An order reducing a specified term or period has effect only in relation to persons dealt with after the order comes into force.
- (3) Where an order increases a specified term or period—
  - (a) it has effect in relation to persons dealt with at any time, whether before or after the order comes into force, and
  - (b) a person who would not have been subject to the notification requirements if the order had been in force when the offence was dealt with (and who is not otherwise subject to those requirements) ceases to be subject to the requirements when the order comes into force.
- (4) An order under this paragraph is subject to affirmative resolution procedure.

*Service offences: period for which notification requirements apply*

- 7 (1) The period for which the notification requirements apply is—
  - (a) 30 years in the case of a person who—
    - (i) is aged 18 or over at the time of conviction for the service offence, and
    - (ii) receives in respect of the offence a sentence within sub-paragraph (2);
  - (b) 15 years in the case of a person who—
    - (i) is aged 18 or over at the time of conviction for the service offence, and
    - (ii) receives in respect of the offence a sentence within sub-paragraph (3);
  - (c) 10 years in any other case.
- (2) The sentences where a 30 year period applies are—
  - (a) imprisonment or custody for life,
  - (b) imprisonment or a custodial order for a term of 10 years or more,
  - (c) imprisonment or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 (c. 44),
  - (d) detention during Her Majesty's pleasure.

- (3) The sentences where a 15 year period applies are imprisonment or a custodial order for a term of 5 years or more but less than 10 years.
- (4) The period begins with the day on which the person is dealt with for the offence.
- (5) If a person who is the subject of a finding within paragraph 5(1)(b)(iii) (finding of unfitness to stand trial etc) is subsequently tried for the offence, the period resulting from that finding ends –
  - (a) if the person is acquitted, at the conclusion of the trial;
  - (b) if the person is convicted, when the person is again dealt with in respect of the offence.
- (6) For the purposes of determining the length of the period –
  - (a) a person who has been sentenced in respect of two or more terrorism offences to consecutive terms of imprisonment is treated as if sentenced, in respect of each of the offences, to a term of imprisonment equal to the aggregate of the terms; and
  - (b) a person who has been sentenced in respect of two or more such offences to concurrent terms of imprisonment (X and Y) that overlap for a period (Z) is treated as if sentenced, in respect of each of the offences, to a term of imprisonment equal to X plus Y minus Z.
- (7) In determining whether the period has expired, there shall be disregarded any period when the person was –
  - (a) remanded in or committed to custody by an order of a court,
  - (b) in service custody pursuant to a decision of a court or judge advocate (or an order of a commanding officer under section 110 of the Armed Forces Act 2006 (c. 52)),
  - (c) serving a sentence of imprisonment or detention,
  - (d) detained in a hospital, or
  - (e) detained under the Immigration Acts.
- (8) In sub-paragraph (7)(b) –
  - (a) “service custody” includes, in relation to times before the commencement of the relevant provisions of the Armed Forces Act 2006 (c. 52), military custody, air-force custody and naval custody;
  - (b) “judge advocate” includes, in relation to such times, judicial officer;
  - (c) the reference to section 110 of the Armed Forces Act 2006 (c. 52) includes, in relation to times before the commencement of that section, a reference to –
    - (i) section 75K of the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19);
    - (ii) section 47L of the Naval Discipline Act 1957 (c. 53).

*Modifications in relation to service offences etc*

- 8 (1) In the following provisions, references to a person committed to custody by an order of a court include a person in service custody pursuant to a decision of a court or judge advocate (or an order of a commanding officer under section 110 of the Armed Forces Act 2006 (c. 52)) –
  - (a) section 58(4) (initial notification);



- (b) section 59(8) (notification of changes);
  - (c) section 60(2) (periodic re-notification);
  - (d) section 64(7) (period for which requirements apply);
  - (e) section *(Notification on return after absence from UK)*(3) (notification on return after absence from UK).
- (2) In section 59(4) (notification on release from custody etc) the reference to custody pursuant to an order of a court includes service custody pursuant to a decision of a court or judge advocate (or an order of a commanding officer under section 110 of the Armed Forces Act 2006 (c. 52)).
- (3) Paragraph 7(8) (meaning of “service custody” and “judge advocate”) applies for the purposes of this paragraph.
- 9 In the application of section 58(6) (initial notification: person dealt with before commencement) in relation to a service offence, the reference to a person being on bail pending an appeal includes a person released from custody pending an appeal.
- 10 Where in relation to a service offence the court of trial (as defined by subsection (1A) of section 62 (meaning of “local police area”)) was situated outside the United Kingdom, that section has effect as if subsection (1)(c) were omitted.
- 11 References in this Part to a sentence of detention do not include—
- (a) a sentence of service detention (as defined by section 374 of the Armed Forces Act 2006 (c. 52)), or
  - (b) a corresponding sentence passed under (or by virtue of) the Army Act 1955 (3 & 4 Eliz. 2 c. 18), the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or the Naval Discipline Act 1957 (c. 53).
- 12 The following provisions do not apply in relation to service offences—
- (a) section 55 (offences dealt with before commencement);
  - (b) section 56 (sentences or orders triggering notification requirements);
  - (c) section 64 (period for which requirements apply).

*Application of power to make transitional modifications etc*

- 13 An order under subsection (4) of section 380 of the Armed Forces Act 2006 (c. 52) (power to make transitional modifications etc) which makes provision of the kind mentioned in subsection (6) of that section may provide for paragraph 5(1)(a) or paragraph 7(2) or (3) above to have effect with such modifications (relating to custodial punishments specified in the order) as are so specified.”

127 Insert the following new Schedule—

“TERRORIST FINANCING AND MONEY LAUNDERING

PART 1

CONDITIONS FOR GIVING A DIRECTION

*Conditions for giving a direction*

- 1 (1) The Treasury may give a direction under this Schedule if one or more of the following conditions is met in relation to a country.
- (2) The first condition is that the Financial Action Task Force has advised that measures should be taken in relation to the country because of the risk of terrorist financing or money laundering activities being carried on—
  - (a) in the country,
  - (b) by the government of the country, or
  - (c) by persons resident or incorporated in the country.
- (3) The second condition is that the Treasury reasonably believe that there is a risk that terrorist financing or money laundering activities are being carried on—
  - (a) in the country,
  - (b) by the government of the country, or
  - (c) by persons resident or incorporated in the country,
 and that this poses a significant risk to the national interests of the United Kingdom.
- (4) The third condition is that the Treasury reasonably believe that—
  - (a) the development or production of nuclear, radiological, biological or chemical weapons in the country, or
  - (b) the doing in the country of anything that facilitates the development or production of any such weapons,
 poses a significant risk to the national interests of the United Kingdom.
- (5) The power to give a direction is not exercisable in relation to an EEA state.

*Main definitions*

- 2 (1) “Terrorist financing” means—
  - (a) the use of funds, or the making available of funds, for the purposes of terrorism, or
  - (b) the acquisition, possession, concealment, conversion or transfer of funds that are (directly or indirectly) to be used or made available for those purposes.
- (2) “Money laundering” means an act which falls within section 340(11) of the Proceeds of Crime Act 2002 (c. 29).
- (3) “Nuclear weapon” includes a nuclear explosive device that is not intended for use as a weapon.
- (4) “Radiological weapon” means a device designed to cause destruction, damage or injury by means of the radiation produced by the decay of radioactive material.

- (5) “Chemical weapon” means a chemical weapon as defined by section 1(1) of the Chemical Weapons Act 1996 (c. 6), other than one whose intended use is only for permitted purposes (as defined by section 1(3) of that Act).
- (6) “Biological weapon” means anything within section 1(1)(a) or (b) of the Biological Weapons Act 1974 (c. 6).

## PART 2

## PERSONS TO WHOM A DIRECTION MAY BE GIVEN

*Persons to whom a direction may be given*

- 3 (1) A direction under this Schedule may be given to—
- (a) a particular person operating in the financial sector,
  - (b) any description of persons operating in that sector, or
  - (c) all persons operating in that sector.
- (2) In this Schedule “relevant person”, in relation to a direction, means any of the persons to whom the direction is given.
- (3) A direction may make different provision in relation to different descriptions of relevant person.

*Persons operating in the financial sector*

- 4 (1) Any reference in this Schedule to a person operating in the financial sector is to a credit or financial institution that—
- (a) is a United Kingdom person, or
  - (b) is acting in the course of a business carried on by it in the United Kingdom.
- (2) This is subject to the exceptions in paragraph 6.

*Meaning of “credit institution” and “financial institution”*

- 5 (1) “Credit institution” means—
- (a) a credit institution as defined in Article 4(1)(a) of the banking consolidation directive, or
  - (b) a branch (within the meaning of Article 4(3) of that directive) located in an EEA state of—
    - (i) an institution within sub-paragraph (a), or
    - (ii) an equivalent institution whose head office is located in a non-EEA state,
 when it accepts deposits or other repayable funds from the public or grants credits for its own account (within the meaning of the banking consolidation directive).
- (2) “Financial institution” means—
- (a) an undertaking, including a money service business, when it carries out one or more of the activities listed in points 2 to 12 and 14 of Annex 1 to the banking consolidation directive, other than—
    - (i) a credit institution;
    - (ii) an undertaking whose only listed activity is trading for own account in one or more of the products listed in point

- 7 of Annex 1 to the banking consolidation directive where the undertaking does not have a customer, and for this purpose “customer” means a person who is not a member of the same group as the undertaking;
- (b) an insurance company duly authorised in accordance with the life assurance consolidation directive, when it carries out activities covered by that directive;
  - (c) a person whose regular occupation or business is the provision to other persons of an investment service or the performance of an investment activity on a professional basis, when providing or performing investment services or activities (within the meaning of the markets in financial instruments directive), other than a person falling within Article 2 of that directive;
  - (d) a collective investment undertaking, when marketing or otherwise offering its units or shares;
  - (e) an insurance intermediary as defined in Article 2(5) of Directive 2002/92/EC of the European Parliament and of the Council of 9th December 2002 on insurance mediation (other than a tied insurance intermediary as mentioned in Article 2(7) of that Directive), when it acts in respect of contracts of long-term insurance within the meaning given by article 3(1) of, and Part II of Schedule 1 to, the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544);
  - (f) a branch located in an EEA state of –
    - (i) a person referred to in any of paragraphs (a) to (e), or
    - (ii) a person equivalent to a person within any of those paragraphs whose head office is located in a non-EEA state,
 when carrying out any activity mentioned in that paragraph;
  - (g) an insurance company (as defined by section 1165(3) of the Companies Act 2006 (c. 46));
  - (h) the National Savings Bank;
  - (i) the Director of Savings, when money is raised under the auspices of the Director under the National Loans Act 1968 (c. 13).

#### *Exceptions*

- 6 (1) For the purposes of this Schedule the following are not regarded as persons operating in the financial sector when carrying out any of the following activities –
- (a) a society registered under the Industrial and Provident Societies Act 1965 (c. 12), when it –
    - (i) issues withdrawable share capital within the limit set by section 6 of that Act (maximum shareholding in society);
    - or
    - (ii) accepts deposits from the public within the limit set by section 7(3) of that Act (carrying on of banking by societies);
  - (b) a society registered under the Industrial and Provident Societies Act (Northern Ireland) 1969, when it –
    - (i) issues withdrawable share capital within the limit set by section 6 of that Act (maximum shareholding in society);
    - or

- (ii) accepts deposits from the public within the limit set by section 7(3) of that Act (carrying on of banking by societies);
  - (c) a person within any of paragraphs 1 to 23 or 25 to 51 of the Schedule to the Financial Services and Markets Act 2000 (Exemption) Order 2001 (S.I. 2001/1201), when carrying out an activity in respect of which the person is exempt;
  - (d) a person who was an exempted person for the purposes of section 45 of the Financial Services Act 1986 (c. 60) (miscellaneous exemptions) immediately before its repeal, when exercising the functions specified in that section.
- (2) A person who falls within the definition of “credit institution” or “financial institution” solely as a result of engaging in financial activity on an occasional or very limited basis is not regarded for the purposes of this Schedule as operating in the financial sector.
- (3) For the purposes of sub-paragraph (2) a person is regarded as engaging in a financial activity on an occasional or very limited basis if—
- (a) the person's total annual turnover in respect of the financial activity does not exceed £64,000,
  - (b) the financial activity is limited in relation to any customer to no more than one transaction exceeding 1,000 euro (whether the transaction is carried out in a single operation or a series of operations which appear to be linked),
  - (c) the financial activity does not exceed 5% of the person's total annual turnover,
  - (d) the financial activity is ancillary and directly related to the person's main activity,
  - (e) the financial activity is not the transmission or remittance of money (or any representation of monetary value) by any means,
  - (f) the person's main activity is not that of a credit or financial institution, and
  - (g) the financial activity is provided only to customers of the person's main activity.

#### *Interpretation of this Part*

- 7 In this Part of this Schedule—
- “the banking consolidation directive” means Directive 2006/48/EC of the European Parliament and of the Council of 14th June 2006 relating to the taking up and pursuit of the business of credit institutions;
  - “the life assurance consolidation directive” means Directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002 concerning life assurance;
  - “the markets in financial instruments directive” means Directive 2004/39/EC of the European Parliament and of the Council of 12th April 2004 on markets in financial instruments.

#### *Power to amend*

- 8 (1) The Treasury may by order amend paragraphs 4 to 7.
- (2) Any such order is subject to affirmative resolution procedure.

## PART 3

## REQUIREMENTS THAT MAY BE IMPOSED BY A DIRECTION

*Requirements that may be imposed by a direction*

- 9 (1) A direction under this Schedule may impose requirements in relation to transactions or business relationships with—
- (a) a person carrying on business in the country;
  - (b) the government of the country;
  - (c) a person resident or incorporated in the country.
- (2) The direction may impose requirements in relation to—
- (a) a particular person within sub-paragraph (1),
  - (b) any description of persons within that sub-paragraph, or
  - (c) all persons within that sub-paragraph.
- (3) In this Schedule “designated person”, in relation to a direction, means any of the persons in relation to whom the direction is given.
- (4) The kinds of requirement that may be imposed by a direction under this Schedule are specified in—
- paragraph 10 (customer due diligence);
  - paragraph 11 (ongoing monitoring);
  - paragraph 12 (systematic reporting);
  - paragraph 13 (limiting or ceasing business).
- (5) A direction may make different provision—
- (a) in relation to different descriptions of designated person, and
  - (b) in relation to different descriptions of transaction or business relationship.
- (6) The requirements imposed by a direction must be proportionate having regard to the advice mentioned in paragraph 1(2) or, as the case may be, the risk mentioned in paragraph 1(3) or (4) to the national interests of the United Kingdom.

*Customer due diligence*

- 10 (1) A direction may require a relevant person to undertake enhanced customer due diligence measures—
- (a) before entering into a transaction or business relationship with a designated person, and
  - (b) during a business relationship with such a person.
- (2) The direction may do either or both of the following—
- (a) impose a general obligation to undertake enhanced customer due diligence measures;
  - (b) require a relevant person to undertake specific measures identified or described in the direction.
- (3) “Customer due diligence measures” means measures to—
- (a) establish the identity of the designated person,
  - (b) obtain information about—
    - (i) the designated person and their business, and

- (ii) the source of their funds, and
  - (c) assess the risk of the designated person being involved in relevant activities.
- (4) In sub-paragraph (3)(c) “relevant activities” means –
  - (a) terrorist financing;
  - (b) money laundering; or
  - (c) the development or production of nuclear, radiological, biological or chemical weapons or the facilitation of that development or production.
- (5) A direction may not impose requirements of a kind mentioned in this paragraph on a person who is regarded as operating in the financial sector by virtue only of paragraph 5(2)(g) (certain insurance companies).

#### *Ongoing monitoring*

- 11
- (1) A direction may require a relevant person to undertake enhanced ongoing monitoring of any business relationship with a designated person.
  - (2) The direction may do either or both of the following –
    - (a) impose a general obligation to undertake enhanced ongoing monitoring;
    - (b) require a relevant person to undertake specific measures identified or described in the direction.
  - (3) “Ongoing monitoring” of a business relationship means –
    - (a) keeping up to date information and documents obtained for the purposes of customer due diligence measures, and
    - (b) scrutinising transactions undertaken during the course of the relationship (and, where appropriate, the source of funds for those transactions) to ascertain whether the transactions are consistent with the relevant person’s knowledge of the designated person and their business.
  - (4) A direction may not impose requirements of a kind mentioned in this paragraph on a person who is regarded as operating in the financial sector by virtue only of paragraph 5(2)(g) (certain insurance companies).

#### *Systematic reporting*

- 12
- (1) A direction may require a relevant person to provide such information and documents as may be specified in the direction relating to transactions and business relationships with designated persons.
  - (2) A direction imposing such a requirement must specify how the direction is to be complied with, including –
    - (a) the person to whom the information and documents are to be provided, and
    - (b) the period within which, or intervals at which, information and documents are to be provided.
  - (3) The power conferred by this paragraph is not exercisable in relation to information or documents in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.

- (4) The exercise of the power conferred by this paragraph and the provision of information under it is not otherwise subject to any restriction on the disclosure of information, whether imposed by statute or otherwise.

*Limiting or ceasing business*

- 13 A direction may require a relevant person not to enter into or continue to participate in—
- (a) a specified transaction or business relationship with a designated person,
  - (b) a specified description of transactions or business relationships with a designated person, or
  - (c) any transaction or business relationship with a designated person.

PART 4

PROCEDURAL PROVISIONS AND LICENSING

*General directions to be given by order*

- 14 (1) A direction given to—
- (a) a description of persons operating in the financial sector, or
  - (b) all persons operating in that sector,
- must be contained in an order made by the Treasury.
- (2) If the order contains requirements of a kind mentioned in paragraph 13 (limiting or ceasing business)—
- (a) it must be laid before Parliament after being made, and
  - (b) if not approved by a resolution of each House of Parliament before the end of 28 days beginning with the day on which it is made, it ceases to have effect at the end of that period.
- In calculating the period of 28 days, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (3) An order's ceasing to have effect in accordance with sub-paragraph (2) does not affect anything done under the order.
- (4) An order to which sub-paragraph (2) does not apply is subject to negative resolution procedure.
- (5) If apart from this sub-paragraph an order under this paragraph would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument.

*Specific directions: notification and duration of directions*

- 15 (1) This paragraph applies in relation to a direction given to a particular person.
- (2) The Treasury must give notice of the direction to the person.
- (3) The direction (if not previously revoked and whether or not varied) ceases to have effect at the end of the period of one year beginning with the day on which the direction is given.



This is without prejudice to the giving of a further direction.

- (4) The Treasury may vary or revoke the direction at any time.
- (5) Where the direction is varied or ceases to have effect (whether on revocation or otherwise), the Treasury must give notice of that fact to the person.

*General directions: publication and duration of directions*

- 16 (1) This paragraph applies to an order containing directions under paragraph 14 (general directions given by order).
- (2) The Treasury must take such steps as they consider appropriate to publicise the making of the order.
- (3) An order –
  - (a) revoking the order, or
  - (b) varying the order so as to make its provisions less onerous,is subject to negative resolution procedure.
- (4) The order (if not previously revoked and whether or not varied) ceases to have effect at the end of the period of one year beginning with the day on which it was made.

This is without prejudice to the making of a further order.
- (5) Where the order is varied or ceases to have effect (whether on revocation or otherwise), the Treasury must take such steps as they consider appropriate to publicise that fact.

*Directions limiting or ceasing business: exemption by licence*

- 17 (1) The following provisions apply where a direction contains requirements of a kind mentioned in paragraph 13 (limiting or ceasing business).
- (2) The Treasury may grant a licence to exempt acts specified in the licence from those requirements.
- (3) A licence may be –
  - (a) general or granted to a description of persons or to a particular person;
  - (b) subject to conditions;
  - (c) of indefinite duration or subject to an expiry date.
- (4) The Treasury may vary or revoke a licence at any time.
- (5) On the grant, variation or revocation of a licence, the Treasury must –
  - (a) in the case of a licence granted to a particular person, give notice of the grant, variation or revocation to that person;
  - (b) in the case of a general licence or a licence granted to a description of persons, take such steps as the Treasury consider appropriate to publicise the grant, variation or revocation of the licence.

## PART 5

## ENFORCEMENT: INFORMATION POWERS

*Enforcement authorities and officers*

- 18 (1) In this Schedule “enforcement authority” means –
- (a) the Financial Services Authority (“the FSA”),
  - (b) the Commissioners for Her Majesty’s Revenue and Customs (“HMRC”),
  - (c) the Office of Fair Trading (“the OFT”), or
  - (d) in relation to credit unions in Northern Ireland, the Department of Enterprise, Trade and Investment in Northern Ireland (“DETINI”).
- (2) In this Part of this Schedule “enforcement officer” means –
- (a) an officer of the FSA, including a member of the staff or an agent of the FSA,
  - (b) an officer of Revenue and Customs,
  - (c) an officer of the OFT,
  - (d) an officer of DETINI acting for the purposes of its functions under this Schedule in relation to credit unions in Northern Ireland, or
  - (e) a local enforcement officer.
- (3) A “local enforcement officer” means –
- (a) in Great Britain, an officer of a local weights and measures authority;
  - (b) in Northern Ireland, an officer of DETINI acting pursuant to arrangements made with the OFT for the purposes of this Schedule.

*Power to require information or documents*

- 19 (1) An enforcement officer may by notice to a relevant person require the person –
- (a) to provide such information as may be specified in the notice, or
  - (b) to produce such documents as may be so specified.
- (2) An officer may exercise powers under this paragraph only if the information or documents sought to be obtained as a result are reasonably required in connection with the exercise by the enforcement authority for whom the officer acts of its functions under this Schedule.
- (3) Where an officer requires information to be provided or documents produced under this paragraph –
- (a) the notice must set out the reasons why the officer requires the information to be provided or the documents produced, and
  - (b) the information must be provided or the documents produced –
    - (i) before the end of such reasonable period as may be specified in the notice; and
    - (ii) at such place as may be so specified.
- (4) In relation to a document in electronic form the power to require production of it includes a power to require the production of a copy of

it in legible form or in a form from which it can readily be produced in visible and legible form.

- (5) An enforcement officer may take copies of, or make extracts from, any document produced under this paragraph.
- (6) The production of a document does not affect any lien which a person has on the document.

*Entry, inspection without a warrant etc*

- 20 (1) Where an enforcement officer has reasonable cause to believe that any premises are being used by a relevant person in connection with the person's business activities, the officer may on producing evidence of authority at any reasonable time—
  - (a) enter the premises;
  - (b) inspect the premises;
  - (c) observe the carrying on of business activities by the relevant person;
  - (d) inspect any document found on the premises;
  - (e) require any person on the premises to provide an explanation of any document or to state where it may be found.
- (2) An enforcement officer may take copies of, or make extracts from, any document found under sub-paragraph (1).
- (3) An officer may exercise powers under this paragraph only if the information or document sought to be obtained as a result is reasonably required in connection with the exercise by the enforcement authority for whom the officer acts of its functions under this Schedule.
- (4) In this paragraph "premises" means any premises other than premises used only as a dwelling.

*Entry to premises under warrant*

- 21 (1) A justice may issue a warrant under this paragraph if satisfied on information on oath given by an enforcement officer that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.
- (2) The first set of conditions is—
  - (a) that there is on the premises specified in the warrant a document in relation to which a requirement could be imposed under paragraph 19(1)(b), and
  - (b) that if such a requirement were to be imposed—
    - (i) it would not be complied with, or
    - (ii) the document to which it relates would be removed, tampered with or destroyed.
- (3) The second set of conditions is—
  - (a) that a person on whom a requirement has been imposed under paragraph 19(1)(b) has failed (wholly or in part) to comply with it, and
  - (b) that there is on the premises specified in the warrant a document that has been required to be produced.

- (4) The third set of conditions is –
  - (a) that an enforcement officer has been obstructed in the exercise of a power under paragraph 20, and
  - (b) that there is on the premises specified in the warrant a document that could be inspected under paragraph 20(1)(d).
- (5) A justice may issue a warrant under this paragraph if satisfied on information on oath given by an officer that there are reasonable grounds for suspecting that –
  - (a) an offence under this Schedule has been, is being or is about to be committed by a relevant person, and
  - (b) there is on the premises specified in the warrant a document relevant to whether that offence has been, or is being or is about to be committed.
- (6) A warrant issued under this paragraph shall authorise an enforcement officer –
  - (a) to enter the premises specified in the warrant;
  - (b) to search the premises and take possession of anything appearing to be a document specified in the warrant or to take, in relation to any such document, any other steps which may appear to be necessary for preserving it or preventing interference with it;
  - (c) to take copies of, or extracts from, any document specified in the warrant;
  - (d) to require any person on the premises to provide an explanation of any document appearing to be of the kind specified in the warrant or to state where it may be found;
  - (e) to use such force as may reasonably be necessary.
- (7) Where a warrant is issued by a justice under sub-paragraph (1) or (5) on the basis of information on oath given by an officer of the FSA, for “an enforcement officer” in sub-paragraph (6) substitute “a constable”.
- (8) In sub-paragraphs (1), (5) and (7), “justice” means –
  - (a) in relation to England and Wales, a justice of the peace;
  - (b) in relation to Scotland, a justice within the meaning of section 307 of the Criminal Procedure (Scotland) Act 1995 (interpretation);
  - (c) in relation to Northern Ireland, a lay magistrate.
- (9) In the application of this paragraph to Scotland, the references in sub-paragraphs (1), (5) and (7) to information on oath are to be read as references to evidence on oath.

*Restrictions on powers*

- 22 (1) This paragraph applies in relation to the powers conferred by –
  - (a) paragraph 19 (power to require information or documents),
  - (b) paragraph 20 (entry, inspection without warrant etc), or
  - (c) paragraph 21 (entry to premises under warrant).
- (2) Those powers are not exercisable in relation to information or documents in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.

- (3) The exercise of those powers and the provision of information or production of documents under them is not otherwise subject to any restriction on the disclosure of information, whether imposed by statute or otherwise.

*Failure to comply with information requirement*

- 23 (1) If on an application made by –
  - (a) an enforcement authority, or
  - (b) a local weights and measures authority or DETINI pursuant to arrangements made with the OFT –
    - (i) by or on behalf of the authority; or
    - (ii) by DETINI,it appears to the court that a person (the “information defaulter”) has failed to do something that they were required to do under paragraph 19(1), the court may make an order under this paragraph.
- (2) An order under this paragraph may require the information defaulter –
  - (a) to do the thing that they failed to do within such period as may be specified in the order;
  - (b) otherwise to take such steps to remedy the consequences of the failure as may be so specified.
- (3) If the information defaulter is a body corporate, a partnership or an unincorporated body of persons that is not a partnership, the order may require any officer of the body corporate, partnership or body, who is (wholly or partly) responsible for the failure to meet such costs of the application as are specified in the order.
- (4) In this paragraph “the court” means –
  - (a) in England and Wales and Northern Ireland, the High Court or the county court;
  - (b) in Scotland, the Court of Session or the sheriff court.

*Powers of local enforcement officers*

- 24 (1) A local enforcement officer may only exercise powers under this Part of this Schedule pursuant to arrangements made with the OFT –
  - (a) by or on behalf of the relevant local weights and measures authority, or
  - (b) by DETINI.
- (2) Anything done or omitted to be done by, or in relation to, a local enforcement officer in the exercise or purported exercise of a power in this Part of this Schedule is treated for all purposes as if done or omitted to be done by, or in relation to, an officer of the OFT.
- (3) Sub-paragraph (2) does not apply for the purposes of criminal proceedings brought against the local enforcement officer, the relevant local weights and measures authority, DETINI or the OFT, in respect of anything done or omitted to be done by the officer.
- (4) A local enforcement officer must not disclose to any person other than the OFT and the relevant local weights and measures authority or, as the case may be, DETINI information obtained by the officer in the exercise of powers under this Part of this Schedule unless –

- (a) the officer has the approval of the OFT to do so, or
  - (b) the officer is under a duty to make the disclosure.
- (5) In this paragraph “the relevant local weights and measures authority”, in relation to a local enforcement officer, means the authority of which the officer is an officer.

## PART 6

## ENFORCEMENT: CIVIL PENALTIES

*Power to impose civil penalties*

- 25 (1) An enforcement authority may impose a penalty of such amount as it considers appropriate on a person who fails to comply with a requirement imposed –
- (a) by a direction under this Schedule, or
  - (b) by a condition of a licence under paragraph 17.
- For this purpose “appropriate” means effective, proportionate and dissuasive.
- (2) No such penalty is to be imposed if the authority is satisfied that the person took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.
- (3) In deciding whether to impose a penalty for failure to comply with a requirement, an enforcement authority must consider whether the person followed any relevant guidance which was at the time –
- (a) issued by a supervisory authority or any other appropriate body,
  - (b) approved by the Treasury, and
  - (c) published in a manner approved by the Treasury as suitable in their opinion to bring the guidance to the attention of persons likely to be affected by it.
- (4) In sub-paragraph (3) “appropriate body” means a body which regulates or is representative of any trade, profession, business or employment carried on by the person.
- (5) A person on whom a penalty is imposed under this paragraph is not liable to be proceeded against for an offence under paragraph 30 in respect of the same failure.

*Imposition of penalty by HMRC: procedure and reviews*

- 26 (1) This paragraph applies where HMRC decide to impose a penalty under paragraph 25 on a person.
- (2) HMRC must give the person notice of –
- (a) their decision to impose the penalty and its amount,
  - (b) the reasons for imposing the penalty,
  - (c) the right to a review under this paragraph, and
  - (d) the right to appeal under paragraph 28.
- (3) The person may by notice to HMRC require them to review their decision.

- (4) A notice requiring a review may not be given after the end of the period of 45 days beginning with the day on which HMRC first gave the person notice under sub-paragraph (2).
- (5) On a review under this paragraph, HMRC must either –
  - (a) confirm the decision, or
  - (b) withdraw or vary the decision and take such further steps (if any) in consequence of the withdrawal or variation as they consider appropriate.
- (6) Where HMRC do not, within the period of 45 days beginning with the day the notice under sub-paragraph (3) was given, give notice to the person of their determination of the review, they are to be taken to have confirmed their decision.

*Imposition of penalty by other enforcement authority: procedure*

- 27
- (1) This paragraph applies if the FSA, the OFT or DETINI (“the authority”) proposes to impose a penalty under paragraph 25 on a person.
  - (2) The authority must give the person notice of –
    - (a) the proposal to impose the penalty and the proposed amount,
    - (b) the reasons for imposing the penalty, and
    - (c) the right to make representations to the authority within a specified period (which may not be less than 28 days).
  - (3) The authority must then decide, within a reasonable period, whether to impose a penalty under paragraph 25 and must give the person notice –
    - (a) if it decides not to impose a penalty, of that decision;
    - (b) if it decides to impose a penalty, of the following matters –
      - (i) the decision to impose a penalty and the amount,
      - (ii) the reasons for the decision, and
      - (iii) the right to appeal under paragraph 28.

*Appeal against imposition of civil penalty*

- 28
- (1) A person may appeal to the tribunal against –
    - (a) a decision of HMRC on a review under paragraph 26;
    - (b) a decision of the FSA or the OFT under paragraph 27.
  - (2) A person may appeal to the High Court in Northern Ireland against a decision of DETINI under paragraph 27.
  - (3) On the appeal the tribunal or court may –
    - (a) set aside the decision appealed against, and
    - (b) impose any penalty that could have been imposed by the body whose decision is appealed or remit the matter to that body.
  - (4) An appeal against a decision of HMRC may not be made after the end of the period of 30 days beginning with –
    - (a) the date of the document notifying the person of the decision, or
    - (b) if paragraph 26(6) (deemed confirmation of decision) applies, the day after the end of the period mentioned there.

- (5) In this paragraph “the tribunal” means the First-tier Tribunal or, where so provided by or determined under Tribunal Procedure Rules, the Upper Tribunal.
- (6) The Treasury may by order provide that, until a time specified in the order, appeals under sub-paragraph (1) are to be made—
  - (a) in the case of a decision of HMRC, to a VAT and duties tribunal;
  - (b) in the case of a decision of the FSA, to the Financial Services and Markets Tribunal;
  - (c) in the case of a decision of the OFT, to the Consumer Credit Appeals Tribunal;
 (rather than to the tribunal).
- (7) An order under sub-paragraph (6) may provide that any enactment applies (with or without modifications) in relation to an appeal to a tribunal mentioned in paragraph (a), (b) or (c) of that sub-paragraph.
- (8) Such an order is subject to negative resolution procedure.

*Payment and recovery of civil penalties*

- 29 (1) A penalty imposed under paragraph 25 is payable to the enforcement authority that imposed it.
- (2) Any such penalty is a debt due to the authority and is recoverable accordingly.

PART 7

ENFORCEMENT: OFFENCES

*Offences: failure to comply with requirement imposed by direction*

- 30 (1) A person who fails to comply with a requirement imposed by a direction under this Schedule commits an offence, subject to the following provisions.
- (2) No offence is committed if the person took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.
- (3) In deciding whether a person has committed an offence under this paragraph the court must consider whether the person followed any relevant guidance that was at the time—
  - (a) issued by a supervisory authority or any other appropriate body,
  - (b) approved by the Treasury, and
  - (c) published in a manner approved by the Treasury as suitable in their opinion to bring the guidance to the attention of persons likely to be affected by it.
- (4) In sub-paragraph (3) “appropriate body” means a body that regulates or is representative of any trade, profession, business or employment carried on by the alleged offender.
- (5) A person guilty of an offence under this paragraph is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;



- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.
- (6) A person who is convicted of an offence under this paragraph is not liable to a penalty under paragraph 25 in respect of the same failure.

*Offences in connection with licences*

- 31 (1) A person commits an offence who for the purpose of obtaining a licence under paragraph 17 –
- (a) provides information that is false in a material respect or a document that is not what it purports to be, and
  - (b) knows that, or is reckless as to whether, the information is false or the document is not what it purports to be.
- (2) A person guilty of an offence under this paragraph is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both.

*Extra-territorial application of offences*

- 32 (1) An offence under this Schedule may be committed by a United Kingdom person by conduct wholly or partly outside the United Kingdom.
- (2) Nothing in this paragraph affects any criminal liability arising otherwise than under this paragraph.

*Prosecution of offences*

- 33 (1) Proceedings for an offence under this Schedule may be instituted in England and Wales only by –
- (a) the FSA;
  - (b) the Director of Revenue and Customs Prosecutions;
  - (c) the OFT;
  - (d) a local weights and measures authority; or
  - (e) the Director of Public Prosecutions.
- (2) Proceedings for an offence under this Schedule may be instituted in Northern Ireland only by –
- (a) the FSA;
  - (b) HMRC;
  - (c) the OFT;
  - (d) DETINI; or
  - (e) the Director of Public Prosecutions for Northern Ireland.
- (3) In section 168(4) of the Financial Services and Markets Act 2000 (appointment by FSA of persons to carry out investigation), after paragraph (b) insert –
- “(ba) a person may be guilty of an offence under Schedule (Terrorist financing and money laundering) to the Counter-Terrorism Act 2008 (terrorist financing or money laundering);”.
- (4) In section 402(1) of that Act (power of FSA to institute proceedings), omit the “or” before paragraph (b) and after that paragraph insert –
- “or

- (c) Schedule (*Terrorist financing and money laundering*) to the Counter-Terrorism Act 2008 (terrorist financing or money laundering).”.
- (5) HMRC may conduct a criminal investigation into any offence under this Schedule.
- (6) In sub-paragraph (5) “criminal investigation” has the meaning given by section 35(5)(b) of the Commissioners for Revenue and Customs Act 2005 (c. 11).

*Jurisdiction to try offences*

- 34 Where an offence under this Schedule is committed outside the United Kingdom—
- (a) proceedings for the offence may be taken at any place in the United Kingdom, and
  - (b) the offence may for all incidental purposes be treated as having been committed at any such place.

*Time limit for summary proceedings*

- 35 (1) An information relating to an offence under this Schedule that is triable by a magistrates' court in England and Wales may be so tried if it is laid—
- (a) at any time within three years after the commission of the offence, and
  - (b) within twelve months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the knowledge of the prosecutor.
- (2) Summary proceedings in Scotland for an offence under this Schedule—
- (a) must not be commenced after the expiration of three years from the commission of the offence;
  - (b) subject to that, may be commenced at any time within twelve months after the date on which evidence sufficient in the Lord Advocate's opinion to justify the proceedings came to the knowledge of the Lord Advocate.
- Section 136(3) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (date when proceedings deemed to be commenced) applies for the purposes of this sub-paragraph as for the purposes of that section.
- (3) A magistrates' court in Northern Ireland has jurisdiction to hear and determine a complaint charging the commission of a summary offence under this Schedule provided that the complaint is made—
- (a) within three years from the time when the offence was committed, and
  - (b) within twelve months from the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the knowledge of the prosecutor.
- (4) For the purposes of this paragraph a certificate of the prosecutor (or, in Scotland, the Lord Advocate) as to the date on which such evidence as is referred to above came to their notice is conclusive evidence.

*Liability of officers of bodies corporate etc*

- 36 (1) If an offence under this Schedule committed by a body corporate is shown—
- (a) to have been committed with the consent or the connivance of an officer of the body corporate, or
  - (b) to be attributable to any neglect on the part of any such officer, the officer as well as the body corporate is guilty of an offence and liable to be proceeded against and punished accordingly.
- (2) If an offence under this Schedule committed by a partnership is shown—
- (a) to have been committed with the consent or the connivance of a partner, or
  - (b) to be attributable to any neglect on the part of a partner, the partner as well as the partnership is guilty of an offence and liable to be proceeded against and punished accordingly.
- (3) If an offence under this Schedule committed by an unincorporated association (other than a partnership) is shown—
- (a) to have been committed with the consent or the connivance of an officer of the association, or
  - (b) to be attributable to any neglect on the part of any such officer, the officer as well as the association is guilty of an offence and liable to be proceeded against and punished accordingly.
- (4) If the affairs of a body corporate are managed by its members, subparagraph (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body.
- (5) In this paragraph—
- “officer” —
    - (a) in relation to a body corporate, means a director, manager, secretary, chief executive, member of the committee of management, or a person purporting to act in such a capacity, and
    - (b) in relation to an unincorporated association, means any officer of the association or any member of its governing body, or a person purporting to act in such capacity;
  - “partner” includes a person purporting to act as a partner.

*Proceedings against unincorporated bodies*

- 37 (1) Proceedings for an offence under this Schedule alleged to have been committed by a partnership or an unincorporated association must be brought in the name of the partnership or association (and not in that of its members).
- (2) In proceedings for such an offence brought against a partnership or unincorporated association—
- (a) section 33 of the Criminal Justice Act 1925 (c. 86) (procedure on charge of offence against corporation) and Schedule 3 to the Magistrates' Courts Act 1980 (corporations) apply as they do in relation to a body corporate;

- (b) section 70 of the Criminal Procedure (Scotland) Act 1995 (proceedings against bodies corporate) applies as it does in relation to a body corporate;
  - (c) section 18 of the Criminal Justice (Northern Ireland) Act 1945 (procedure on charge) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (corporations) apply as they do in relation to a body corporate.
- (3) Rules of court relating to the service of documents have effect in relation to proceedings for an offence under this Schedule as if the partnership or association were a body corporate.
- (4) A fine imposed on the partnership or association on its conviction of such an offence is to be paid out of the funds of the partnership or association.

## PART 8

### SUPPLEMENTARY AND GENERAL

#### *Report to Parliament*

- 38 (1) As soon as reasonably practicable after the end of each calendar year, the Treasury must –
- (a) prepare a report about their exercise during that year of their functions under this Schedule, and
  - (b) lay a copy of the report before Parliament.
- (2) Sub-paragraph (1) does not apply in relation to a year if no direction under this Schedule is in force at any time in that year.

#### *Supervision by supervisory authority*

- 39 (1) A supervisory authority must take appropriate measures to monitor persons operating in the financial sector for whom it is the supervisory authority for the purpose of securing compliance by those persons with the requirements of any directions under this Schedule.
- (2) For the purposes of this Schedule –
- (a) the FSA is the supervisory authority for –
    - (i) credit institutions that are authorised persons;
    - (ii) financial institutions (except money service businesses that are not authorised persons and consumer credit financial institutions);
  - (b) the OFT is the supervisory authority for consumer credit financial institutions;
  - (c) HMRC are the supervisory authority for money service businesses that are not authorised persons;
  - (d) DETINI is the supervisory authority for credit unions in Northern Ireland.
- (3) Where under sub-paragraph (2) there is more than one supervisory authority for a person, the authorities may agree that one of them will act as the supervisory authority for that person for the purposes of this Schedule.

- (4) Where an agreement has been made under sub-paragraph (3), the authority that has agreed to act as the supervisory authority must –
  - (a) where directions under this Schedule have been given to specified persons operating in the financial sector, notify those persons;
  - (b) where such directions have been given to all persons operating in the financial sector or to a description of such persons, publish the agreement in such way as it considers appropriate.
- (5) Where no agreement has been made under sub-paragraph (3), the supervisory authorities for a person must co-operate in the performance of their functions under this paragraph.

#### *Assistance in preparing guidance*

- 40 The Treasury must provide such assistance as may reasonably be required by a supervisory authority or other body drawing up guidance that, when issued and published with the approval of the Treasury, would be relevant guidance for the purposes of paragraph 25(3) (civil penalties) and 30(3) (offences: failure to comply with requirement imposed by direction).

#### *Functions of Financial Services Authority*

- 41 (1) The functions of the FSA under this Schedule shall be treated for the purposes of Parts 1, 2 and 4 of Schedule 1 to the Financial Services and Markets Act 2000 (c. 8) (general provisions relating to the Authority) as if they were functions conferred on the FSA under that Act.
- (2) Any penalty under paragraph 25 (civil penalties) received by the FSA is to be applied towards expenses incurred by it in connection with its functions under this Schedule or for any incidental purpose.

#### *Notices*

- 42 (1) A notice under this Schedule may be given to a person –
  - (a) by posting it to the person's last known address, or
  - (b) where the person is a body corporate, partnership or unincorporated association, by posting it to the registered or principal office of the body, partnership or association.
- (2) Where the Treasury are under a duty to give a notice to a person but do not have an address for them, they must make arrangements for the notice to be given to the person at the first available opportunity.

#### *Crown application*

- 43 (1) This Schedule binds the Crown, subject as follows.
- (2) No contravention by the Crown of a provision of this Schedule makes the Crown criminally liable.
- (3) The following courts may, on the application of a person appearing to the court to have an interest, declare unlawful any act or omission of the Crown that constitutes such a contravention –
  - (a) the High Court in England and Wales;
  - (b) the Court of Session;

- (c) the High Court in Northern Ireland.
- (4) Nothing in this section affects Her Majesty in her private capacity. This is to be construed as if section 38(3) of the Crown Proceedings Act 1947 (c. 44) (meaning of Her Majesty in her private capacity) were contained in this Schedule.

*Meaning of “United Kingdom person”*

- 44 (1) In this Schedule “United Kingdom person” means a United Kingdom national or a body incorporated or constituted under the law of any part of the United Kingdom.
- (2) For this purpose a United Kingdom national is an individual who is –
- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;
  - (b) a person who under the British Nationality Act 1981 is a British subject; or
  - (c) a British protected person within the meaning of that Act.
- (3) Her Majesty may by Order in Council extend the definition in subparagraph (1) so as to apply to bodies incorporated or constituted under the law of any of the Channel Islands, the Isle of Man or any British overseas territory.

*Interpretation*

- 45 (1) In this Schedule –
- “authorised person” means a person who is authorised for the purposes of the Financial Services and Markets Act 2000 (c. 8);
- “business relationship” means a business, professional or commercial relationship between a relevant person and a customer, which is expected by the relevant person, at the time when contact is established, to have an element of duration;
- “conduct” includes acts and omissions;
- “consumer credit financial institution” means a financial institution that under section 21 of the Consumer Credit Act 1974 (c. 39) requires a licence to carry on a consumer credit business, other than –
- (a) a person covered by a group licence issued by the Office of Fair Trading under section 22 of that Act,
  - (b) a money service business, or
  - (c) an authorised person;
- “country” includes territory;
- “document” means information recorded in any form;
- “money service business” means an undertaking which by way of business operates a currency exchange office, transmits money (or any representations of monetary value) by any means or cashes cheques which are made payable to customers;
- “notice” means a notice in writing.
- (2) In this Schedule any reference to an amount in one currency includes the equivalent amount in any other currency.
- (3) Unless otherwise defined, expressions used in this Schedule and in –

- (a) Directive 2005/60/EC of the European Parliament and of the Council of 26th October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, or
- (b) Commission Directive 2006/70/EC of 1st August 2006 laying down implementing measures for that directive,
- have the same meaning as in the relevant directive.

*Index of defined expressions*

- 46 In this Schedule the following expressions are defined or otherwise explained by the provisions indicated –

authorised person	paragraph 45(1)
the banking consolidation directive (in Part 2 of this Schedule)	paragraph 7
biological weapon	paragraph 2(6)
business relationship	paragraph 45(1)
chemical weapon	paragraph 2(5)
conduct	paragraph 45(1)
consumer credit financial institution	paragraph 45(1)
country	paragraph 45(1)
credit institution	paragraph 5(1)
customer due diligence measures	paragraph 10(3)
designated person, in relation to a direction	paragraph 9(3)
DETINI	paragraph 18(1)(d)
document	paragraph 45(1)
enforcement authority	paragraph 18(1)
enforcement officer (in Part 5 of this Schedule)	paragraph 18(2)
financial institution	paragraph 5(2)
the FSA	paragraph 18(1)(a)
HMRC	paragraph 18(1)(b)
the life assurance consolidation directive (in Part 2 of this Schedule)	paragraph 7

local enforcement officer (in Part 5 of this Schedule)	paragraph 18(3)
the markets in financial instruments directive (in Part 2 of this Schedule)	paragraph 7
money laundering	paragraph 2(2)
money service business	paragraph 45(1)
notice	paragraph 45(1)
nuclear weapon	paragraph 2(3)
the OFT	paragraph 18(1)(c)
persons operating in the financial sector	paragraph 4
radiological weapon	paragraph 2(4)
relevant person, in relation to a direction	paragraph 3(2)
supervisory authority	paragraph 39(2)
terrorist financing	paragraph 2(1)
United Kingdom person	paragraph 44”

#### Schedule 7

- 128** Page 95, line 30, leave out “a member of Her Majesty’s Forces” and insert “—
- (a) a member of Her Majesty’s forces,
  - (b) a member of any of the intelligence services, or
  - (c) a constable,”

- 129** Page 95, line 34, at end insert—

“( ) In this paragraph “the intelligence services” means the Security Service, the Secret Intelligence Service and GCHQ (within the meaning of section 3 of the Intelligence Services Act 1994 (c. 13)).”

#### Schedule 8

- 130** Page 97, line 36, at end insert—

“PART 4A

ASSET FREEZING

<i>Title and number</i>	<i>Extent of revocation</i>
Terrorism (United Nations Measures) Order 2001 (S.I. 2001/3365)	Article 4(7) and (8).



<i>Title and number</i>	<i>Extent of revocation</i>
Al-Qa'ida and Taliban (United Nations Measures) Order 2002 (S.I. 2002/111)	Article 8(7) and (8).
Terrorism (United Nations Measures) Order 2006 (S.I. 2006/2657)	Article 5(4) and (5).
Al-Qaida and Taliban (United Nations Measures) Order 2006 (S.I. 2006/2952)	Article 5(4) and (5).

These revocations do not affect an application made before the commencement of section (*Application to set aside asset freezing decision*).

#### **In the Title**

- 131** Line 5, leave out from “offences;” to first “to” in line 6 and insert “to confer further powers to act against terrorist financing, money laundering and certain other activities; to provide for review of certain Treasury decisions and about evidence in, and other matters connected with, review proceedings;”
- 132** Line 6, leave out “inquests and”
- 133** Line 7, after “inquiries” insert “and inquests”

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LORDS AMENDMENTS TO THE  
COUNTER-TERRORISM BILL

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