EXPLANATORY MEMORANDUM TO

THE AL-QAIDA AND TALIBAN (ASSET-FREEZING) REGULATIONS 2010

2010 No. [DRAFT]

1. This explanatory memorandum has been prepared by the Treasury and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations provide criminal penalties for breach of the financial restrictions imposed by EC Regulation 881/2002 as amended (OJ No. L 139, 29.5.2002, p. 9) on persons listed in Annex I to that Regulation. The Regulations also make provision for the Treasury to grant licences to exempt actions from the financial restrictions and they provide a system for obtaining information to maintain the restrictions and deal with breaches of them.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Regulations are being made following the Supreme Court's Order of 4 February 2010, in the case of HM Treasury v Ahmed and others [2010] UKSC 2, quashing the Al-Qaida and Taliban (United Nations Measures) Order 2006 (S.I. 2006/2952) ("the 2006 Order").

4. Legislative Context

4.1 On 15 October 1999 the United Nations Security Council adopted resolution 1267(1999) which, amongst other matters, required Member States to freeze the assets of those identified by the Committee established under that resolution as being members of the Taliban or owned or controlled by the Taliban. It also prohibited anyone from making funds or economic resources available to designated persons.

4.2 UNSCR 1267(1999) was reaffirmed and extended in further Security Council resolutions, most recently in resolution 1904(2009) which requires Member States to freeze the assets of persons identified by the Committee established under resolution 1267(1999) as being Usama bin Laden, or members of Al-Qaida or the Taliban or associated with any of these. Member States are also required to ensure that no financial assets or economic resources are made available directly or indirectly for the benefit of designated persons.

4.3 Council Regulation (EC) 881/2002 of 27 May 2002, as amended, implements the requirements of the United Nations Security Council Resolutions in the European Union. The Regulation requires Member States of the European Union to determine the sanctions to be imposed where the provisions of the Regulation are infringed.

4.4 On 27 January 2010 the Supreme Court held that section 1(1) of the United Nations Act 1946 did not provide sufficient powers to implement United Nations Security Council Resolution 1267 (1999) as reaffirmed and extended. The Supreme Court therefore ordered on 4 February 2010 that the 2006 Order be quashed.

4.5 The effect of these Regulations is to provide for the enforcement of financial restrictions imposed on persons included in Annex I to the Council Regulation. Provision is made for references to Annex I to the Council Regulation to be construed as references to that Annex as amended from time to time.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom and, outside the United Kingdom, to British citizens and those with a UK connection.

6. European Convention on Human Rights

The Exchequer Secretary to the Treasury has made the following statement regarding Human Rights:

In my view the provisions of the Al-Qaida and Taliban (Asset-Freezing) Regulations 2010 are compatible with the Convention rights

7. Policy background

- ***What is being done and why***

7.1 The UK is required by UNSCR 1267, as reaffirmed and extended, and EC Regulation 881/2002 to implement financial restrictions against those associated with Al-Qaida and the Taliban. Counter-terrorist financial restrictions aim to prevent terrorist acts by stopping funds or economic resources from being used for terrorist purposes. It is a preventative measure that works by denying terrorists the ability to raise and move funds; containing funds already in the financial system; and disrupting the activities of those designated. They are an important and valuable tool in the fight against international terrorism that also help prevent the UK financial sector from being unknowingly used for terrorist-related activities.

7.2 The Regulations provide a mechanism for implementing and administering counter-terrorist financial restrictions against those persons associated with Al-Qaida and Taliban, consistent with UNSCR 1267, and subsequent resolutions, and the provisions of the EC Regulation. They establish penalties for breaching the prohibitions of the EC Regulation or failing to comply with the requirements of the Regulations. The EC Regulation is directly applicable in UK law but penalties for its breach require UK secondary legislation.

7.3 The Regulations:

- define a designated person as being a person listed in Annex I to the Council Regulation;

- define the scope of the prohibitions that apply to the freezing of funds and economic resources and also to the making available of funds and economic resources to, or for the benefit of, a designated person;

- provide penalties for breach of the prohibitions;

- provide a mechanism for granting licences and create an offence where a person knowingly or recklessly provides false information or documents to obtain a licence or fails to comply with the conditions of a licence;

- include provisions for the gathering and sharing of information and create an offence for failing to comply with or obstructing the Treasury's exercise of these powers; and

- amend the Counter-Terrorism Act 2008 so that a person affected by a decision made by the Treasury in connection with the exercise of their functions under the Regulations may apply to the court to have the decision set aside.

7.4 The Regulations provide that references to Annex I of the Council Regulation should be construed as a reference to Annex I as amended from time to time. The purpose of this is to allow for amendments to Annex I, which contains the list of designated persons, to take immediate effect in the United Kingdom. A person who is included in Annex I may challenge their inclusion at the General Court of the European Union.

- ***Consolidation***

7.5 It is not expected that there will be any consolidation of this instrument.

8. Consultation outcome

8.1 There has been no consultation on this instrument.

9. Guidance

9.1 General guidance with regard to financial sanctions and the relevant legislation is available on Her Majesty's Treasury website (www.hm-treasury.gov.uk). In addition, the Treasury release financial sanctions notifications at any time when there is a substantive change.

10. Impact

10.1 The impact on business, charities or voluntary bodies is expected to be minimal.

10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The basis for the final decision on what action to take to assist small business was not subject to consultation.

12. Monitoring & review

12.1 This instrument will be monitored and reviewed at any point when the UNSCR or the EC Regulation is amended.

13. Contact

The Asset Freezing Unit at Her Majesty's Treasury, Tel: 020 7270 5454 or email: AFU@hmtreasury.x.gsi.gov.uk can answer any queries regarding the instrument.