EXPLANATORY MEMORANDUM TO

THE TERRORISM (UNITED NATIONS MEASURES) ORDER 2009

2009 No. 1747

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

2. Purpose of the instrument

2.1 The Terrorism (United Nations Measures) Order 2009 (SI 2009/1747) (the "Order") provides for the freezing of terrorist assets and for prohibitions on the making available of funds, financial services and economic resources to specified persons. The Order gives effect to UN Security Council Resolution 1373(2001) ("UNSCR 1373") and provides penalties for offences enforcing Regulation (EC) No. 2580/2001 (OJ No.L344,28.12.2001 p.70) ("the EC Regulation").

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

3.1 None

4. Legislative Context

4.1 On 28th September 2001, the United Nations Security Council adopted resolution 1373(2001) which requires Member States to freeze the assets of those involved in terrorist acts, and to prohibit funds and financial services being made available to those involved in terrorist acts.

4.2 On 27th December 2001, the European Council Common Position 2001/931/CFSP, pursuant to UNSCR 1373, established a list of individuals and entities involved in terrorism. The EC Regulation implemented prohibitions in relation to persons on the list, in particular an asset freeze and prohibitions on making funds and financial services available to the persons. The list itself is published and updated by Council Decisions or Commission Regulations.

4.3 This Order replaces the Terrorism (United Nations Measures) Order 2006 (S.I. 2006/2657) ("the 2006 Order") which implemented the requirements of UNSCR 1373 and the EC Regulation. This Order makes changes to the nature of the prohibitions against funds, financial services and economic resources being made available to or for the benefit of persons subject to asset freezes and those acting on their behalf set out in the 2006 Order. Provision is made for licences to be granted for humanitarian and other purposes for certain acts to be exempted from the prohibitions. There are also reporting requirements and information gathering powers set out in the Order.

4.4 The Order takes into account the decision of the Court of Appeal in *A,K,M,Q &G – v- HM Treasury* ([2008] EWCA Civ 1187) which severed certain words from article 4(2) of the 2006 Order in relation to the Treasury's power to designate persons to be subject to asset freezes.

4.5 The Order takes advantage of paragraph 1A of Schedule 2 to the European Communities Act 1972 (inserted by section 28 of the Legislative and Regulatory Reform Act 2006) so as to provide for an ambulatory reference to the EC Regulation –i.e. the Order applies in respect of the EC Regulation as amended from time to time. This means that changes to the list of persons in the EC Regulation will take effect without the need of further updating domestic legislation.

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

As the instrument is not subject to affirmative procedure and does not amend primary legislation, no statement is required.

7. Policy background

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

7.1 The Order has the same two core functions as the 2006 Order which it replaces:

- To establish, consistent with UNSCR 1373 and the provisions of the EC Regulation, the UK's own national regime for designating terrorist suspects at the domestic level.

- To establish penalties for breach of the EC Regulation, which sets out the regime for freezing assets of individuals listed at the EC level and for prohibiting funds and financial services from being made available to them. The Regulation is directly applicable in UK law but penalties for its breach require UK secondary legislation.

7.2 This Order follows the approach of the 2006 Order by providing for the freezing of assets and prohibition on funds, financial services and economic resources being made available in the case of both international and domestic designations of persons. In the former case, the Order refers to persons identified as provided in Article 2(3) of the EC Regulation, which has a list of persons which may be amended by Commission Regulation or Council Decision. In the latter case, the Order enables the Treasury to impose an asset freeze and prohibitions on making funds, financial services and economic resources available to persons identified by the Treasury.

7.3 The Order makes changes to the prohibitions set out in the 2006 Order in relation to making funds, financial services or economic resources available for the benefit of designated persons, by providing that funds, economic resources or financial services are only made available for the benefit of a designated person if that

person obtains, or is able to obtain, a significant financial benefit. It also modifies the prohibition in relation to making economic resources available to a designated person, by providing a defence for a person to show that they did not know and had no reasonable cause to suspect that economic resources which they provided to a designated person would be likely to be exchanged or used in exchange for funds, goods or services by the designated person. The Order also takes into account the Court of Appeal judgment referred to in paragraph 4.4.

- ***Consolidation***

7.4 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 in respect of 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: 0207 270 5454 or e-mail assetfreezingunit@hm-treasury.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency:	Title:	
HM Treasury	**Impact Assessment of Terrorism (United Nations Measures) Order 2009**	
Stage: Final/Implementation	**Version:** 1	**Date: 29 June 2009**
Related Publications: Terrorism (United Nations Measures) Order 2006, Counter-Terrorism Act 2008		

Available to view or download at:

http://www.hm-treasury.gov.uk

Contact for enquiries: Asset Freezing Unit **Telephone:** 0207 270 5454

What is the problem under consideration? Why is government intervention necessary?

United Nations Security Council Resolution 1373 (2001), made in the aftermath of the 9/11 attacks, requires states to apply asset freezing measures in relation to terrorism. The UK gives effect to these requirements by Orders in Council, the current Order being the Terrorism (United Nations Measures) Order 2006 which implements and enforces domestic and EC terrorism asset freezes in accordance with UN requirements. Government intervention is necessary to meet our international obligations and to reduce the risk of terrorist attacks through restricting their means of finance.

What are the policy objectives and the intended effects?

The primary purpose of the Treasury's asset freezing regime is to help prevent terrorist acts by preventing suspected terrorists' funds and economic resources from being used or diverted for terrorist purposes. The prohibition on making financial services available to designated persons will also protect the financial sector from being unknowingly used to finance terrorist-related activities.

What policy options have been considered? Please justify any preferred option.

1. Do nothing: The Terrorism (United Nations Measures) Order 2006 currently provides for asset freezing measures in relation to UNSCR 1373 and the associated EC Regulation. This Order needs amendment however to clarify the prohibitions, introduce more safeguards and reflect experience operating the freezing regime.
2. Introduce a thoroughly revised Order: our preferred option.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

HMT will keep the asset freezing regime under review and will continue to report quarterly to Parliament on use of powers.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

Sarah McCarthy-Fry ..... Date: 2 July 2009

Summary: Analysis & Evidence

Policy Option: 3	Description:

COSTS

ANNUAL COSTS	
One-off (Transition) **Yrs**	Description and scale of **key monetised costs** by 'main affected groups' As this Order replaces the Terrorism Order 2006, the financial sector should already have the necessary systems and controls in place. As set out below there will be some additional and non-significant costs for money service businesses.
£ N/A	
Average Annual Cost (excluding one-off)	**Total Cost** (PV) **£**
£ N/A	

Other **key non-monetised costs** by 'main affected groups' None expected.

BENEFITS

ANNUAL BENEFITS	
One-off **Yrs**	Description and scale of **key monetised benefits** by 'main affected groups' There may be marginal benefit to the financial sector from reducing the record keeping requirements in line with the Money Laundering Regulations 2007.
£ N/A	
Average Annual Benefit	**Total Benefit** (PV) **£**
£ N/A	

Other **key non-monetised benefits** by 'main affected groups' Unquantifiable benefit of disrupting terroist financing and related activities and reducing the risk to the UK's national interest and protecting the financial sector from risk of terrorist abuse, as well as furthering national security and foreign policy goals.

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	**Net Benefit Range** (NPV) **£**	**NET BENEFIT** (NPV Best estimate) **£**

What is the geographic coverage of the policy/option?				UK
On what date will the policy be implemented?				
Which organisation(s) will enforce the policy?				HMT, police
What is the total annual cost of enforcement for these				£ N/A
Does enforcement comply with Hampton principles?				Yes
Will implementation go beyond minimum EU requirements?				No
What is the value of the proposed offsetting measure per year?				£ N/A
What is the value of changes in greenhouse gas emissions?				£ N/A
Will the proposal have a significant impact on competition?				No
Annual cost (£-£) per organisation (excluding one-off)	Micro **N/A**	Small **N/A**	Medium **N/A**	Large **N/A**

Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)
Increase £	Decrease £	**Net**	**£**

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

International and Domestic Policy Context

Following the 9/11 attacks, on 28th September 2001 the United Nations Security Council adopted Resolution 1373(2001) which requires Member States to freeze the assets of those involved in terrorist acts, and to prohibit funds and financial services being made available to those involved in terrorist acts.

On 27th December 2001, the European Council Common Position 2001/931/CFSP, pursuant to UNSCR 1373 (2001), established an EC-maintained list of individuals and entities involved in terrorism. Council Regulation (EC) No 2580/2001 implemented prohibitions in relation to persons on the EC list, in particular an asset freeze and prohibitions on making funds and financial services available to listed persons. The list itself is published and updated by Council Decisions or Commission Regulations.

The Terrorism (United Nations Measures) Order 2001 (S.I. 2001/3365) ("the 2001 Order") implemented the requirements of UNSCR 1373. This was replaced by The Terrorism (United Nations Measures) Order 2006 (S.I. 2006/2657) ("the 2006 Order") which currently implements the requirements of UNSCR 1373 and Council Regulation (EC) No 2580/2001.

The National Security Strategy of the United Kingdom: Update 2009 "Security for the Next Generation" published on 25 June 2009 notes that "The threat from international terrorism to the UK and our interests overseas remains severe, and although significant progress has been made in weakening the capability of international terrorist networks, continuing serious terrorist attacks across the globe show the ongoing potency of this threat."

Policy objectives

The Counter-terrorist asset freezing regime helps prevent terrorist acts by preventing funds, economic resources or financial services from being used or diverted for terrorist purposes. It is a preventative (not punitive) measure that works by denying the ability to raise and move funds; containing funds already in the financial system;; and disrupting the activities of those designated. It is an important and valuable tool in the fight against international terrorism that also helps prevent the UK financial sector from being unknowingly used for terrorist-related activities.

Policy options

The Treasury has considered 2 options:

1. Do nothing

UNSCR 1373 requires all states to take measures to freeze the assets of those involved in terrorist acts, and to prohibit funds and financial services being made available to those involved in terrorist acts. A statutory instrument is therefore required to meet our international obligations. The 2006 Order is no longer the optimum way of doing so. Not amending the Order would continue to meet our international obligations but we would not

be able to introduce some of the safeguards, clarifications and other improvements specified below.

2. Amending the Terrorism Order as drafted

The 2009 Order replaces the 2006 Order and makes changes to the nature of the prohibitions against funds, financial services and economic resources being made available to or for the benefit of persons subject to asset freezes and those acting on their behalf set out in the 2006 Order. Provision is made for licences to be granted for humanitarian and other purposes for certain acts to be exempted from the prohibitions. There are also reporting requirements and information gathering powers set out in the Order.

This Order takes advantage of paragraph 1A of Schedule 2 to the European Communities Act 1972 (inserted by section 28 of the Legislative and Regulatory Reform Act 2006) so as to provide for an ambulatory reference to the EC Regulation – i.e. the Order applies in respect of the EC Regulation as amended from time to time. This means that changes to the list of persons in the EC Regulation will take effect without the need of further updating domestic legislation.

The Order has the same two core functions as the 2006 Order:

- To establish, consistent with UNSCR 1373 and the provisions of the EC Regulation, the UN's own national regime for designating terrorist suspects at the domestic level.

- To establish penalties for breach of the EC Regulation, which sets out the regime for freezing assets of individuals listed at the EC and for prohibiting funds and financial services from being made available to them. The Regulation is directly applicable in UK law but penalties for its breach require UK secondary legislation.

This Order follows the approach of the 2006 Order by providing for the freezing of assets and prohibition on funds, financial services and economic resources being made available in the case of both international and domestic designations of persons. In the former case, the Order refers to persons identified as provided in Article 2(3) of the EC Regulation, which has a list of persons which may be amended by Commission Regulation or Council Decision. In the latter case, the Order enables the Treasury to impose an asset freeze and prohibitions on making funds, financial services and economic resources available to persons identified by the Treasury.

This Order amends the 2006 Order to make changes to the prohibitions in relation to making funds, financial services or economic resources available for the benefit of designated persons. It also amends the prohibition in relation to making economic resources available to a designated person. The Order also takes into account the Court of Appeal judgment referred to above which severed certain words from the power set out in the 2006 Order for the Treasury to designate a person.

The net effect off these changes is to make changes to the Order to improve its operational effectiveness and make it more proportionate.

Costs and Benefits

Costs

As the Order replaces the 2006 Order, with broadly similar prohibitions and requirements, we expect the Order to be broadly cost neutral to the financial sector.

The Order does, however, place additional reporting requirements on Money Service Businesses (MSBs) in line with the existing requirements on other relevant institutions. These requirements are consistent with those placed on regulated firms under the Money Laundering Regulations 2007. When a new name is added to the list of persons subject to asset freezes under the Terrorism Order, relevant institutions must inform the Treasury if they know or suspect that a customer, past customer (with whom they have dealt in the last five years) or any other person with whom they have had dealings in the course of relevant business in the past five years is a restricted person etc (see Article 18). This will place a new burden on MSBs when there is a new listing. We do not expect this cost to be significant.

There will be no additional compliance or enforcement costs arising from amendments to the Order.

Benefits

The benefits are not quantifiable. The Government's policy objective is to help prevent terrrorist attakcs by constraining their finances. Disrupting terrosit-related activites contributes to national security and preventing the UK financial sector from being unknowingly used to facilitate terrorism-related activities. There will be a marginal benefit to the financial sector from the rationalisation of record-keeping requirements to bring them more into line with the requirements of the Money Laundering Regulations 2007.

Offences and penalty provisions

Criminal offences and penalties apply in relation to non-compliance with the requirements of this Order. These are the same as in the 2006 Order.

Conclusion

A Statutory instrument is needed to meet the requirements of UNSCR 1373 and to provide the mechanisms for enforcing Council Regulation (EC) No 2580/2001. Amending the Order as proposed is the most effective way to amend the Order, clarifying certain aspects and strengthening and making more explicit the safeguards in how the regime is operated without compromising its effectiveness. It would be broadly cost neutral and is the Government's preferred option.

Regarding the **specific impact tests** in the Checklist:

Competition assessment

This direction applies uniformly to all firms operating in the UK financial sector. There should be no material impact on competition among financial and credit institutions.

Small firms

There is no wider exemption for small firms generally. The costs of compliance could be proportionately higher for a smaller business to the extent that they are affected; however, as they are already regulated for the purposes of the Money Laundering Regulations 2007 and obliged to comply with other financial sanctions regimes, such firms should already have compliance systems in place. See also section on costs above for MSBs. The burden of trawling through records is likely to be proportionately higher on smaller MSBs, but they are likely to have less records to trawl though and as this is a one-off cost on designation, we believe these costs to be justified.

Human Rights

Directions made under the Order designating persons will strike an appropriate balance between the requirements of the public interest and the requirements of the protection of an individual's rights, provision of a fair hearing and respect for privacy, and is therefore compatible with Articles 6 and 8, and Article 1 of Protocol 1 of the ECHR, as set out below:

Article 1 Protocol 1

In imposing a freeze on dealing with a persons funds and economic resources, a direction interferes with the peaceful enjoyment of the person's possessions and engages Article 1 of Protocol 1 of the ECHR. We consider such interference is justified in the public interest, given the public interest in preventing funds or economic resources being used for terrorist purposes. The Treasury's power to grant licences to exempt certain acts from the restrictions potentially mitigates any interference, and enables the Treasury to ensure that a fair balance is struck in any particular case.

Article 8

The publicising of a direction in respect of a particular person will interfere with that person's right to respect for his private and family life. We consider such interference is justified because of the public interest in a direction being publicised as fully as possible so that the prohibitions in the order can be given the fullest effect.

Article 6

The Treasury intends to exercise its power section 64(2) of the Counter-Terrorism Act 2008 to add this Order to the definition of 'UN terrorism orders' under section 63 of the Act, as a result of which any person affected by a decision under the Order may apply to the High Court to set aside the decision, thus satisfying the requirements of article 6.

Other impacts

The following issues have also been considered in this assessment and the Government has decided that these measures have no impact on them.

- Legal aid
- Sustainable development
- Carbon assessment and other environment
- Health
- Race, Disability, Gender equality
- Rural proofing

Consultation

No formal consultation has taken place outside of Government, however, the Treasury has frequent contact with designated persons and their legal representatives. The Order takes account of these views, as well as the views of the judiciary in related legal judgments. Informal discussions were also held with the financial sector.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	*Results in Evidence Base?*	*Results annexed?*
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	Yes	No
Rural Proofing	No	No