

Subsidiary Legislation made under s.37(d).

Terrorist Asset-Freezing Regulations 2011

LN.2011/039

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Implementing:

Council Regulation (EC) No. 2580/2001

ARRANGEMENT OF REGULATIONS

Regulation

**PART I
PRELIMINARY**

1. Title and commencement.
2. Interpretation.

**PART II
DESIGNATIONS**

3. Meaning of designated person.
4. Minister's power to make final designation.
5. Notification of final designation.
6. Duration of final designation.
7. Variation or revocation of final designation.
8. Minister's power to make interim designation.
9. Notification of interim designation.
10. Duration of interim designation.
11. Variation or revocation of interim designation.
12. Confidential information.

**PART III
PROHIBITIONS IN RELATION TO DESIGNATED PERSONS**

13. Meaning of "funds" and "economic resources".
14. Meaning of "financial services".
15. Meaning of "relevant institution".
16. Freezing of funds and economic resources.
17. Making funds or financial services available to a designated person.
18. Making funds or financial services available for benefit of designated person.
19. Making economic resources available to designated person.
20. Making economic resources available for benefit of designated person.
21. Exceptions.
22. Licences.
23. Circumventing prohibitions etc.

**PART IV
INFORMATION**

24. Reporting obligations of relevant institutions.

25. Powers to request information.
26. Production of documents.
27. Failure to comply with request for information.
28. General power to disclose information.
29. Co-operation with investigations.
30. Application of provisions.

PART V
SUPPLEMENTARY PROVISIONS

31. Appeal to the court in relation to designations.
32. Review of other decisions by the court.
33. Penalties.
34. Extra-territorial application of offences.
35. Liability of officers of body corporate etc.
36. Jurisdiction to try offences.
37. Time limit for proceeding for summary offences.
38. Consent to prosecution.
39. Procedure for offences by unincorporated bodies.
40. Service of notices.
41. Crown application.
42. Internal security of Gibraltar.

2010-01

Counter-Terrorism

2011/039

Terrorist Asset-Freezing Regulations 2011

In exercise of the powers conferred upon him by section 37(d) of the Counter-Terrorism Act 2010 and section 23(g)(i) of the Interpretation and General Clauses Act, and for the implementation in Gibraltar of Council Regulation (EC) No. 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, which implements United Nations Security Council Resolution 1373 (2001) adopted by the Security Council of the United Nations on 28th September 2001 and Resolution 1452 (2002) adopted by the Security Council of the United Nations on 20 December 2002, the Minister has made the following Regulations—

**PART I
PRELIMINARY**

Title and commencement.

1. These Regulations may be cited as the Terrorist Asset-Freezing Regulations 2011 and come into operation on the 31st day of March 2011.

Interpretation.

2.(1) In these Regulations, unless the context otherwise requires—

“designated person” shall have the meaning assigned to it by regulation 3;

“document” includes information recorded in any form and in relation to information recorded otherwise than in legible form, references to its production include producing a copy of the information in legible form”;

“economic resources” shall have the meaning assigned to it by regulation 13(2);

“final designation” means a designation under regulation 4 and includes any renewed designation;

“Financial Action Task Force” or “FATF” means the inter-governmental body established in 1989 by the Ministers of its Member jurisdictions to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system;

“financial services” shall have the meaning assigned to it by regulation 14;

“funds” shall have the meaning assigned to it by regulation 13(1);

“interim designation” means a designation under regulation 8;

“the Minister” means the Minister with responsibility for financial services;

“the EC Regulation” means Council Regulation (EC) No. 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, as the same may be amended from time to time;

“relevant institution” has the meaning assigned to it by regulation 15;

“the relevant Security Council Resolutions” has the meaning assigned to it by subregulation (2);

“terrorism” has the meaning given to it in section 3(1) to (3) of the Terrorism Act 2005.

(2) For the purposes of these Regulations, “the relevant Security Council Resolutions” are—

- (a) Resolution 1373 (2001) adopted by the Security Council of the United Nations on 28th September 2001; and
- (b) Resolution 1452 (2002) adopted by the Security Council of the United Nations on 20th December 2002.

(3) The Minister may by regulations amend subregulation (2) so as to add further relevant Security Council Resolutions or to remove any that are suspended.

PART II DESIGNATIONS

Meaning of designated person.

3. A “designated person” means—

- (a) a person designated by the Minister pursuant to these Regulations; or
- (b) any natural or legal person, group or entity included in the list provided for by Article 2(3) of the EC Regulation.

Minister’s power to make final designation.

4.(1) The Minister may make a final designation of a person if—

- (a) he reasonably believes that the person—

- (i) is or has been involved in terrorist activity;
 - (ii) is owned or controlled directly or indirectly by a person within subparagraph (i); or
 - (iii) is acting on behalf of or at the direction of a person within subparagraph (i); and
- (b) he considers that it is necessary for purposes connected with protecting members of the public from terrorism that financial restrictions should be applied in relation to the person.
- (2) For this purpose, involvement in terrorist activity is any one or more of the following—
- (a) the commission, preparation or instigation of acts of terrorism;
 - (b) conduct that facilitates the commission, preparation or instigation of such acts or that it is intended to do so; or
 - (c) conduct that gives support or assistance to persons who are known or believed by the person concerned to be involved in conduct falling within paragraph (a) or (b) of this subregulation.
- (3) It is immaterial whether the acts of terrorism in question are specific acts of terrorism or acts of terrorism generally.
- (4) A reference in subregulation (1)(b) to financial restrictions includes a reference to restrictions relating to economic resources.

Notification of final designation.

- 5.(1) Where the Minister makes a final designation of a person, he must—
- (a) give immediate written notice of the designation to the designated person; and
 - (b) take immediate steps to publicise the designation generally and to relevant institutions.
- (2) Unless one or more of the conditions set out in subregulation (3) is met, the Minister must take steps to make public the designation generally.
- (3) The conditions referred to in subregulation (2) are that the Minister—

- (a) believes that the designated person is an individual under the age of 18; or
 - (b) considers that disclosure of the designation should be restricted—
 - (i) in the interests of internal security;
 - (ii) for reasons connected with the prevention or detection of serious crime; or
 - (iii) in the interests of justice.
- (4) If one or more of the conditions under subregulation (3) are met, the Minister must inform only such persons as he considers appropriate.
- (5) If that ceases to be the case, the Minister must—
- (a) give written notice of that fact to the designated person; and
 - (b) take steps to publicise the designation generally.

Duration of final designation.

- 6.(1) A final designation expires at the end of the period of one year beginning with the date on which it was made, unless it was renewed.
- (2) The Minister may renew a final designation at any time before it expires if the requirements in regulation 4(1)(a) and (b) continue to be met.
- (3) A renewed final designation expires at the end of one year beginning with the date on which it was renewed or last renewed unless it is renewed again.
- (4) The provisions of regulation 5 apply where a final designation is renewed or further renewed as in relation to the original making of a final designation.
- (5) On expiry of a final designation, the Minister must—
- (a) give written notice of that fact to the designated person; and
 - (b) take reasonable steps to bring that fact to the attention of the persons informed of the designation.

Variation or revocation of final designation.

7.(1) The Minister may vary or revoke a final designation at any time.

(2) Where a final designation is varied or revoked the Minister must—

- (a) give written notice of the variation or revocation to the designated person; and
- (b) take reasonable steps to bring the variation or revocation to the attention of the persons informed of the designation.

Minister's power to make interim designation.

8.(1) The Minister may make an interim designation of a person if—

- (a) he reasonably suspects that the person—
 - (i) is or has been involved in terrorist activity;
 - (ii) is owned or controlled directly or indirectly by a person within subparagraph (i); or
 - (iii) is acting on behalf of or at the direction of a person within subparagraph (i); and
- (b) he considers that it is necessary for purposes connected with protecting members of the public from terrorism that financial restrictions should be applied in relation to the person.

(2) Subregulations (2) to (4) of regulation 4 apply for the purposes of this regulation as they apply for the purposes of that regulation.

(3) The Minister may not make more than one interim designation of the same person in relation to the same or substantially the same evidence.

Notification of interim designation.

9.(1) Where the Minister makes an interim designation of a person, he must—

- (a) give written notice of the designation to the designated person; and
- (b) take steps to publicise the designation.

(2) Unless one or more of the conditions set out in subregulation (3) is met, the Minister must take steps to publicise the designation generally.

- (3) The conditions referred to in subregulation (2) are that the Minister—
- (a) believes that the designated person is an individual under the age of 18; or
 - (b) considers that disclosure of the designation should be restricted in the following circumstances—
 - (i) in the interests of internal security;
 - (ii) for reasons connected with the prevention or detection of serious crime; or
 - (iii) in the interests of justice.
- (4) If one or more of the conditions under subregulation (3) are met, the Minister must inform only such persons as he considers appropriate.
- (5) If that ceases to be the case, the Minister must—
- (a) give written notice of that fact to the designated person; and
 - (b) take steps to publicise the designation generally.

Duration of interim designation.

- 10.(1) An interim designation expires—
- (a) at the end of the of the period of 30 days beginning with the day on which it was made; or
 - (b) on the making of a final designation in relation to the same person,
- whichever is the earlier.
- (2) On expiry of an interim designation, the Minister must—
- (a) give written notice of that fact to the designated person; and
 - (b) take reasonable steps to bring that fact to the attention of the persons informed of the designation.
- (3) Where an interim designation expires on the making of a final designation in relation to the same person—

- (a) a notice under subregulation (2) may be combined with a notice under regulation 5(1)(a); and
- (b) steps under subregulation (2) may be combined with steps under regulation 5 to publicise the final designation.

Variation or revocation of interim designation.

11.(1) The Minister may vary or revoke an interim designation at any time.

- (2) Where an interim designation is varied or revoked the Minister must—
 - (a) give written notice of the variation or revocation to the designated person; and
 - (b) take reasonable steps to bring the variation or revocation to the attention of the persons informed of the designation.

Confidential information.

12.(1) Where the Minister, in accordance with regulation 5(4) or 9(4), informs only certain persons of a designation, he may specify that information contained in it is to be treated as confidential.

- (2) A person who—
 - (a) is provided with information that is to be treated as confidential in accordance with subregulation (1); or
 - (b) obtains such information,

must not, subject to subregulation (3), disclose it if he knows, or has reasonable cause to suspect, that the information is to be treated as confidential.

(3) The prohibition in subregulation (2) does not apply to any disclosure made by a person with lawful authority.

(4) For this purpose information is disclosed with lawful authority only if and to the extent that—

- (a) the disclosure is by, or authorised by, the Minister;
- (b) the disclosure is by, or with consent of, the designated person;

- (c) the disclosure is necessary to give effect to a requirement imposed under or by virtue of these Regulations or any other enactment; or
- (d) the disclosure is required under—
 - (i) rules of court;
 - (ii) tribunal rules;
 - (iii) a court or tribunal order; or
 - (iv) for the purposes of legal proceedings of any description.
- (5) This regulation does not prevent the disclosure of information that is already, or has previously been, available to the public from other sources.
- (6) A person who contravenes the prohibition in subregulation (2) commits an offence.
- (7) The Supreme Court may on the application of—
 - (a) the person who is the subject of the information; or
 - (b) the Minister,grant an injunction to prevent a breach of the prohibition in subregulation (2).

PART III PROHIBITIONS IN RELATION TO DESIGNATED PERSONS

Meaning of “funds” and “economic resources”.

13.(1) Unless the context otherwise requires—

“funds” means financial assets and benefits of every kind, including (but not limited to)—

- (a) cash, cheques, claims on money, drafts, money orders and other payment instruments;
- (b) deposits with relevant institutions or other persons, balances on accounts, debts and debt obligations;

- (c) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivative products;
 - (d) interest, dividends and other income on or value accruing from or generated by assets;
 - (e) credit, rights of set-off, guarantees, performance bonds and other financial commitments;
 - (f) letters of credit, bills of lading and bills of sale;
 - (g) documents providing evidence of an interest in funds or financial resources;
 - (g) any other instrument of export financing.
- (2) “Economic resources” means assets of every kind whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services.

Meaning of “financial services”.

14.(1) “Financial services” means any service of a financial nature, including but not limited to—

- (a) insurance and insurance-related services (including co-insurances) consisting of—
 - (i) direct life assurance;
 - (ii) direct insurance other than life assurance;
 - (iii) reinsurance and retrocession;
 - (iv) insurance intermediation such as brokerage and agency;
 - (v) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;
- (b) banking and other financial services consisting of—
 - (i) accepting deposits and other repayable funds;
 - (ii) lending of all types (including customer credit, mortgage credit, factoring and financing of commercial transactions);

- (iii) financial leasing;
- (iv) all payment and money transmission services (including credit, charge and debit cards, traveller's cheques and banker's drafts);
- (v) providing guarantees and commitments;
- (vi) financial trading (as defined in subregulation (2));
- (vii) participating in issues of any kind of securities (including underwriting and placement as an agent, whether publicly or privately) and providing services related to such issues;
- (viii) money brokering;
- (ix) asset management such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- (x) settlement and clearing services for financial assets (including securities, derivative products and other negotiable instruments);
- (xi) providing or transferring financial information and financial data processing or related software (but only by suppliers of other financial services); or
- (xii) providing advisory and other auxiliary financial services in respect of any activity listed in sub-paragraphs (i) to (xi) (including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy).

(2) In subregulation (1)(b)(vi) "financial trading" means trading for own account or for account of customers whether on an investment exchange or in an over-the-counter market or otherwise in—

- (a) money market instruments (including cheques, bills and certificates of deposit);
- (b) foreign exchange;
- (c) derivative products (including futures and options);

- (d) exchange rate and interest rate instruments (including products such as swaps and forward rate arrangements);
- (e) transferable securities;
- (f) other negotiable instruments and financial assets (including bullion).

Meaning of “relevant institution”.

15.(1) “Relevant institution” means—

- (a) a person licensed or authorised under the Financial Services (Investment and Fiduciary Services) Act 1989 or the Financial Services (Banking Act) 1992 to carry on regulated activity
- (b) an undertaking that by way of business—
 - (i) operates a currency exchange office;
 - (ii) transmits money (or any representation of monetary value) by any means; or
 - (iii) cashes cheques that are made payable to customers.
- (c) a designated non-financial business or profession as defined by the FATF and not otherwise covered by these Regulations.

Freezing of funds and economic resources.

16.(1) A person must not deal with funds or economic resources owned, held or controlled by a designated person if he knows, or has reasonable cause to suspect, that he is dealing with such funds or economic resources.

(2) In subregulation (1) “deal with” means—

- (a) in relation to funds—
 - (i) use, alter, move, allow access to or transfer;
 - (ii) deal with the funds in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination; or

(iii) make any other change that would enable use, including portfolio management;

(b) in relation to economic resources, exchange or use in exchange for funds, goods or services.

(2A) In subregulation (1) “owned, held or controlled by a designated person” includes jointly with another person, whether or not that other person is also a designated person.

(3) Subregulation (1) is subject to regulations 21 and 22 (exceptions and licences).

(4) A person who contravenes the prohibition in subregulation (1) commits an offence.

Making funds or financial services available to a designated person.

17.(1) A person must not make funds or financial services available directly or indirectly to a designated person if he knows, or has reasonable cause to suspect, that he is making the funds or financial services so available.

(2) Subregulation (1) is subject to regulations 21 and 22 (exceptions and licences).

(3) A person who contravenes the prohibition in subregulation (1) commits an offence.

Making funds or financial services available for benefit of designated person.

18.(1) A person must not make funds or financial services available to any person for the benefit of a designated person if he knows, or has reasonable cause to suspect, that he is making the funds or financial services so available.

(2) For the purposes of this regulation—

(a) funds are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit; and

(b) “financial benefit” includes the discharge of a financial obligation for which the designated person is wholly or partly responsible.

(3) Subregulation (1) is subject to regulations 21 and 22 (exceptions and licences).

(4) A person who contravenes the prohibition in subregulation (1) commits an offence.

Making economic resources available to designated person.

19.(1) A person must not make economic resources available directly or indirectly to a designated person if he knows, or has reasonable cause to suspect—

- (a) that he is making the economic resources so available; and
 - (b) that the designated person would be likely to exchange the economic resources, or use them in exchange, for funds, goods or services.
- (2) Subregulation (1) is subject to regulation 22 (licences).
- (3) A person who contravenes the prohibition in subregulation (1) commits an offence.

Making economic resources available for benefit of designated person.

20.(1) A person must not make economic resources available to any person for the benefit of a designated person if he knows, or has reasonable cause to suspect, that he is making the economic resources so available.

- (2) For the purposes of this regulation—
- (a) economic resources are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit; and
 - (b) “financial benefit” includes the discharge of a financial obligation for which the designated person is wholly or partly responsible.
- (3) Subregulation (1) is subject to regulation 22 (licences).
- (4) A person who contravenes the prohibition in subregulation (1) commits an offence.

Exceptions.

21.(1) The prohibitions in regulations 16, 17 and 18 are not contravened by a relevant institution crediting a frozen account with—

- (a) interest or other earnings due on the account; or
- (b) payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account.

(2) The prohibitions in regulations 17 and 18 on making funds available do not prevent a relevant institution from crediting a frozen account where it receives funds transferred to the account.

(3) The prohibition in regulation 18 is not contravened by the making of a payment which is made to a person who is not a designated person, whether or not the payment is made in respect of a designated person.

(4) A relevant institution must inform the Minister without delay if it credits a frozen account in accordance with subregulation (1)(b) or (2).

(5) In this regulation “frozen account” means an account with a relevant institution which is held or controlled directly or indirectly by a designated person.

Licences.

22.(1) The prohibitions in regulations 16 to 20 do not apply to anything done under the authority of a licence granted by the Minister.

(2) A licence must specify the acts authorised by it and may be—

- (a) general or granted to a category of persons or to a particular person;
- (b) subject to conditions; or
- (c) of indefinite duration or subject to an expiry date.

(3) The Minister may vary or revoke a licence at any time.

(4) On the grant, variation or revocation of a licence, the Minister must—

- (a) in the case of a licence granted to a particular person, give notice of the grant, variation or revocation to that person; and
- (b) in the case of a general licence or a licence granted to a category of persons, take such steps as the Minister considers appropriate to publicise the grant, variation or revocation of the licence.

(5) A person who, for the purpose of obtaining a licence, knowingly or recklessly—

- (a) provides information that is false in a material respect; or
- (b) provides or produces a document that is not what it purports to be,

commits an offence.

(6) A person who purports to act under the authority of a licence but who fails to comply with any conditions included in the licence commits an offence.

Circumventing prohibitions etc.

23. A person who intentionally participates in activities knowing that the object or effect of them is, whether directly or indirectly—

- (a) to circumvent any of the prohibitions in regulations 16 to 20; or
- (b) to enable or facilitate the contravention of any such prohibition,

commits an offence.

**PART IV
INFORMATION**

Reporting obligations of relevant institutions.

24.(1) A relevant institution must inform the Minister as soon as practicable if—

- (a) it knows, or has reasonable cause to suspect, that a person—
 - (i) is a designated person; or
 - (ii) has committed an offence under any provision of Part III; and
- (b) the information or other matter on which the knowledge or suspicion is based came to it in the course of carrying on its business.

(2) Where a relevant institution informs the Minister under subregulation (1), it must state—

- (a) the information or other matter on which the knowledge or suspicion is based; and
- (b) any information it holds about the person by which the person can be identified.

(3) Subregulation (4) applies if—

- (a) a relevant institution informs the Minister under subregulation (1) that it knows, or has reasonable cause to suspect, that a person is a designated person; and

(b) that person is a customer of the institution.

(4) The relevant institution must also state the nature and amount or quantity of any funds or economic resources held by it for the customer at the time when it first had the knowledge or suspicion.

(5) A relevant institution that fails to comply with any requirement of subregulation (1), (2) or (4) commits an offence.

Powers to request information.

25.(1) The Minister may request a designated person to provide information concerning—

(a) funds or economic resources owned, held or controlled by or on behalf of the designated person; or

(b) any disposal of such funds or economic resources.

(2) The Minister may request a designated person to provide such information as he may reasonably require about expenditure—

(a) by or on behalf of the designated person; or

(b) for the benefit of the designated person.

(3) The power in subregulation (1) or (2) is exercisable only where the Minister believes that it is necessary for the purpose of monitoring compliance with or detecting evasion of these Regulations.

(4) The Minister may request a person acting under a licence granted under regulation 22 to provide information concerning—

(a) funds or economic resources dealt with under the licence; or

(b) funds, economic resources or financial services made available under the licence.

(5) The Minister may request any person in or resident in Gibraltar to provide such information as the Minister may reasonably require for the purpose of—

(a) establishing for the purposes of these Regulations—

- (i) the nature and amount or quantity of any funds or economic resources owned, held or controlled by or on behalf of a designated person;
 - (ii) the nature and amount or quantity of any funds, economic resources or financial services made available directly or indirectly to, or for the benefit of, a designated person; or
 - (iii) the nature of any financial transactions entered into by a designated person;
- (b) monitoring compliance with or detecting evasion of these Regulations; or
- (c) obtaining evidence of the commission of an offence under these Regulations.
- (6) The Minister may specify the manner in which, and the period within which, information is to be provided.
- (7) If no such period is specified, the information which has been requested must be provided within a reasonable time.
- (8) A request may include a continuing obligation to keep the Minister informed as circumstances change or on such regular basis as the Minister may specify.
- (9) Information requested under this regulation may relate to any period of time during which a person is, or was, a designated person.
- (10) Information requested under subregulation (1)(b), (2) or (5)(a)(iii) may relate to any period of time before a person became a designated person, as well as, or instead of, any subsequent period of time.

Production of documents.

26.(1) A request under regulation 25 may include a request to produce specified documents or documents of a specified description.

- (2) Where the Minister requests that documents be produced, he may—
- (a) take copies of or extracts from any document so produced;
 - (b) request any person producing a document to give an explanation of it; and
 - (c) where that person is a body corporate, partnership or unincorporated body other than a partnership, request any person who is—

- (i) in the case of a partnership, a present or past partner or employee of the partnership; and
- (ii) in any other case, a present or past officer or employee of the body concerned,

to give an explanation.

(3) Where the Minister requests a designated person or a person acting under a licence granted under regulation 22 to produce documents, that person must—

- (a) take reasonable steps to obtain the documents (if not already in the person's possession or control); and
- (b) keep the documents under his possession or control (except for the purpose of providing them to the Minister or as the Minister may otherwise permit).

Failure to comply with request for information.

27.(1) A person who—

- (a) without reasonable excuse refuses or fails within the time and in the manner specified, or if no time has been specified, within a reasonable time, to comply with any request under this Part;
- (b) knowingly or recklessly gives a information, or produces any document, which is false in material particular in response to such a request;
- (c) with intent to evade the provisions of this Part, destroys, mutilates, defaces, conceals or removes any document; or
- (d) otherwise intentionally obstructs the Minister in the exercise of his powers under this Part,

commits an offence.

(2) Where a person is convicted of an offence under this regulation, the court may make an order requiring that person, within such period as may be specified in the order, to comply with the request.

General power to disclose information.

28.(1) The Minister may disclose any information obtained by him in exercise of his powers under Parts II, III and IV, including any document so obtained and any copy or extract made of any document so obtained—

- (a) to a police officer;
- (b) to the Gibraltar Financial Services Commission;
- (c) for the purpose of giving assistance or co-operation, pursuant to the relevant Security Council Resolutions to—
 - (i) any organ of the United Nations; or
 - (ii) any person in the service of the United Nations, the Council of the European Union, the European Commission or the Government of any country;
- (d) with a view to instituting, or otherwise for the purposes of, any proceedings—
 - (i) in Gibraltar, for an offence under Parts III and IV; or
 - (ii) in the United Kingdom, in any other Member State of the European Union, in any of the Channel Islands, in the Isle of Man or in any British Overseas Territory for an offence under a similar provision in any such jurisdiction; or
- (e) with the consent of a person who, in their own right, is entitled to the information or to possession of the document, copy or extract, to any third party.

(2) In subregulation (1)(e) “in their own right” means not merely in the capacity as a servant or agent of another person.

Co-operation with investigations.

29. The Minister must take such steps as he considers appropriate to co-operate with any investigation, in Gibraltar or elsewhere, relating to the funds, economic resources or financial transactions of a designated person.

Application of provisions.

30.(1) Nothing done under this Part is to be treated as a breach of any restriction imposed by statute or otherwise.

(2) But nothing in this Part authorises a disclosure that contravenes the Data Protection Act 2004.

(3) Nothing in this Part is to be read as requiring a person who has acted as counsel or solicitor for any person to disclose any privileged information in their possession in that capacity.

(4) This Part does not limit the circumstances in which information may be disclosed apart from this Part.

(5) This Part does not limit the powers of the Minister to impose conditions in connection with the discharge of his functions under regulation 22.

(6) In this regulation—

“information” includes documents; and

“privileged information” means information with respect to which a claim to legal professional privilege could be maintained in legal proceedings.

PART V SUPPLEMENTARY PROVISIONS

Appeal to the court in relation to designations.

31.(1) This regulation applies to any decision of the Minister—

- (a) to make or vary an interim or final designation of a person;
- (b) to renew a final designation of a person; or
- (c) not to vary or revoke an interim or final designation of a person.

(2) The designated person concerned may appeal against any such decision to the Supreme Court.

(3) On such an appeal, the court may make such order as it considers appropriate.

(4) The making of an appeal under this regulation does not suspend the effect of the decision to which the appeal relates.

Review of other decisions by the court.

32.(1) This regulation applies to any decision of the Minister in connection with his functions under Parts II to V other than a decision to which regulation 31 applies.

(2) Any person affected by a decision to which this regulation applies may apply to the Supreme Court for the decision to be set aside.

(3) In determining whether the decision should be set aside, the court must 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.

Penalties.

33.(1) A person guilty of an offence under regulation 16, 17, 18, 19, 20 or 23 is liable—

- (a) on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale or to both; or
- (b) on conviction on indictment to imprisonment for a term not exceeding seven years or to a fine or to both.

(2) A person guilty of an offence under regulation 12 or 22 is liable—

- (a) on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale or to both; or
- (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both.

(3) A person guilty of an offence under regulation 24(5) or 27 is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale or to both.

Extra-territorial application of offences.

34.(1) An offence under these Regulations may be committed by conduct wholly or partly outside Gibraltar by—

- (a) a British person; or
- (b) a body incorporated or constituted under the laws of Gibraltar.

(2) In subregulation (1) “British person” means—

- (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) In this regulation “conduct” includes acts and omissions.

(4) Nothing in this regulation affects any criminal liability arising otherwise than under this regulation.

Liability of officers of body corporate etc.

35.(1) Where an offence under these Regulations is committed by a body corporate—

- (a) with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity; or
- (b) is attributable to any neglect on the part of any such person,

that person as well as the body corporate is liable to be proceeded against and punished accordingly.

(2) In subregulation (1) “director” in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(3) Subregulation (1) also applies in relation to a body that is not a body corporate, with the substitution for the reference to a director of the body of a reference—

- (a) in the case of a partnership, to a partner; or
- (b) in the case of an unincorporated body other than a partnership-
 - (i) where the body’s affairs are managed by its members, to a member of the body; or
 - (ii) in any other case, to a member of the governing body.

Jurisdiction to try offences.

36. Where an offence under these Regulations is committed outside Gibraltar—

- (a) proceedings for the offence may be instituted in Gibraltar; and
- (b) the offence may for all incidental purposes be treated as having been committed at any such place.

Time limit for proceeding for summary offences.

37.(1) Information relating to an offence under regulation 24(5) or 27 may be tried by a magistrates' court 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.

Consent to prosecution.

38.(1) No proceedings for an offence under these Regulations shall be instituted except by or with the consent of the Attorney-General.

(2) Nothing in subregulation (1) prevents—

- (a) the arrest of a person in respect of an offence under these Regulations; or
- (b) the remand in custody or on bail of a person charged with such an offence.

Procedure for offences by unincorporated bodies.

39.(1) A fine imposed on an unincorporated body on its conviction for an offence under these Regulations, must be paid out of the funds of the body.

(2) Subregulations (3) to (4) apply if it is alleged that an offence under these Regulations has been committed by an unincorporated body, as opposed to a member of the body.

(3) Proceedings in Gibraltar for such an offence must be brought in the name of the body.

(4) For the purposes of such proceedings—

- (a) any rules of court relating to the service of documents have effect as if the body were a body corporate; and

- (b) the following provisions apply as they apply in relation to a body corporate—
- (i) section 124 of the Criminal Procedure Act; and
 - (ii) Schedule 4 to the Criminal Procedure Act.

Service of notices.

40.(1) This regulation applies in relation to any notice to be given to a person by the Minister under these Regulations.

- (2) Any such notice may be given—
- (a) by posting it to the person's last known address; or
 - (b) where the person is a body corporate, partnership or unincorporated body other than a partnership, by posting it to the registered or principal office of the body or partnership concerned.
- (3) Where the Minister does not have an address for the person, he must make arrangements for the notice to be given to the person at the first available opportunity.

Crown application.

41.(1) These Regulations bind the Crown in right of the Government of Gibraltar.

- (2) No contravention by the Crown in right of the Government of Gibraltar of a provision of these Regulations make the Crown criminally liable.
- (3) Nothing in this regulation affects Her Majesty in her private capacity.

Internal security of Gibraltar.

42.(1) Nothing in these Regulations shall derogate from the responsibility of the Governor under the Constitution for the internal security of Gibraltar.

- (2) Before exercising any right or power under these Regulations the Minister shall consult the Governor in relation to any matter that touches upon the internal security of Gibraltar.
- (3) Where the Governor confirms to the Minister in writing, in relation to any matter that invokes the Governor's responsibility for the internal security of Gibraltar, that the protection of Gibraltar's internal security requires the Minister to exercise or desist from exercising any

2010-01

Counter-Terrorism

2011/039

Terrorist Asset-Freezing Regulations 2011

power or right under these Regulations, the Minister shall forthwith exercise or desist from exercising such power or right accordingly.

(4) Without prejudice to the Minister's obligation to consult the Governor under subregulation (2), the question whether or not the Minister has in the case of any such Direction consulted with the Governor shall not be enquired into in any court of law so as to impute the validity of the decision, direction or action by the Minister.