



Articles

Implementing ‘Targeted’ UN Sanctions in the UK: Is Freezing of Terrorist Assets Giving Fundamental Rights the Cold Shoulder?

by Joe Stevens

“**T**his paper will examine how the UK has implemented ‘targeted’ or ‘smart’ sanctions designed to freeze the assets of individuals and other entities in relation to those suspected of being involved in terrorist activity, through implementation of various United Nations Security Council Resolutions (SCR’s). This article will chart the historical development of these UN sanctions and analyse how the UK introduced them into domestic law, firstly by means of secondary legislation contained in the United Nations Act 1945 and secondly following the decision by the UK Supreme Court in *R v A (& others)* [2] in the form of the Terrorist Asset Freezing Etc Act 2010. Both the case and the subsequent legislation and its impact will also be discussed. Finally the paper will consider whether this implementation has eroded fundamental rights within the UK’s domestic law in order to fulfil our international obligations under the UN charter and what if any protection, is now in place for those named under this system after implementation of the UK’s new asset freezing regime.

The Historical and Legal Background of UN Sanctions

Following the formation of the United Nations, member states bound themselves through the UN’s Charter to maintain international peace and security, to take collective measures for the prevention and removal of any threat to this peace and to promote and encourage respect for human rights and fundamental freedoms (Article 1)[3]. The United Nations Security Council (UNSC) was given primary responsibility for maintaining this peace and security and member states agreed through the charter to carry out the decisions or resolutions of the Security Council in order to achieve this end (Article 24).

Under Article 41 of the UN Charter, the Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. Among a number of miscellaneous provisions in Chapter XVI is one of the most important articles 103, which provides;

“In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.[4]”



Only treaty provisions that are incompatible with *jus cogens*, such as the prohibition on torture are considered void. Obligations under the decisions and enforcement measures of Chapter VII prevail over other commitments of the members concerned in international law[5].

There have of course been numerous threats to international peace and security since 1945. Various UNSC Resolutions have been made calling upon the members of the United Nations to take measures under article 41. As the Security Council's practice has evolved it has become more directive to what States themselves might or might not do SCR 1189[6] (1998) declared that every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another state or acquiescing in organised activities within its own territory which might be directed towards the commission of such acts.

In response to attacks on US embassies and other assets the Security Council directed its attention to the activities of the ruling regime in Afghanistan. SCR 1267(1999) provided for the freezing of funds and other financial resources derived from or generated from property owned or controlled by the Taliban and Al Qaeda. A sanctions Committee was established to oversee implementation of these measures, known as the 1267 Committee. SCR 1333(2000) took this process a step further, it provided that all states should freeze funds and other financial assets of Usama bin Laden and individuals and entities associated with him to ensure that no funds were made available for the benefit of any person or entity associated with him, including the Al-Qaida organisation. Although previous UN practice did not go this far, nothing in article 41 would appear to prohibit the taking of direct collective measures at an international level against individuals. Article 41 contains only an enumeration of the non-military measures that could be taken which was illustrative and non-exhaustive[7].

As part of its response to the attacks on the US mainland collectively known as 9/11, the Security Council broadened its approach to the problem still further. It decided that action now required to be taken against everyone who committed or attempted to commit terrorist acts or facilitated their commission. It adopted SCR 1373(2001) requiring states to complement international co-operation by taking additional measures to prevent and suppress, within their territories through all lawful means, the financing and preparation of any acts of terrorism. The Security Council also decided that all states should, among various other measures, prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other states or their citizens. States were also to ensure that any person who participates in the financing, planning, preparation of terrorist acts or in supporting terrorist acts should be brought to justice. Provision was made for establishing a Committee of the Security Council, consisting of all its members, to monitor implementation of the Resolution, known as the *1373 Committee*.

Prior to the events of 9/11, the United Kingdom Parliament had already enacted a new Terrorism Act in 2000 it had specifically created a criminal regime for dealing with the funding of terrorism. The Act provided the framework for the making of freezing orders. Further legislation in the Prevention of Terrorism Act 2005 provided for the making of control orders which can also affect a person's finances. The Counter-Terrorism Act 2008 introduced a legislative procedure for setting aside financial restrictions decisions taken by the Treasury.

In order to give direct effect to its United Nation Charter obligations in domestic law the United Kingdom had introduced the United Nations Act 1946[8]. This act allows the Government to introduce secondary legislation by making various orders in council to give effect to relevant SCR's.



The Terrorism Order (TO)

SCR 1373 was given effect in UK domestic law by introducing the Terrorism (United Nations Measures) Order 2001 (SI 2001/3365), in October 2001. The wording of its leading provision was modelled on that of the SCR, making it a criminal offence for any person who, except under the authority of a licence granted by the Treasury, makes any funds, financial or related services available directly or indirectly to or for the benefit of a person who commits, attempts to commit, facilitates or participates in the commission of an acts of terrorism. It also includes those people who may be controlled either directly or indirectly and those who act on behalf or at the direction of, anyone involved in terrorism.

A lack of Parliamentary debate regarding the introduction of this major terrorist legislation is typical of Parliament's response to any matter involving 'terrorism', which nearly always passes through both houses with little or no debate. Perhaps most infamously demonstrated by recalling the introduction of the 1911 Official Secrets Act which became law the same day it was introduced to Parliament, leaving the iniquitous Sec 2 on the statute books for over sixty years.

The Terrorism (United Nations Measures) Order 2006[9] (SI 2006/2657) the (TO) was also introduced as an order in council under the same act. It gave effect to SCR 1373(2001) and SCR 1452(2002), revoking the 2001 order. The new order allowed for the Treasury to give a direction as to who could be designated provided they are satisfied under the grounds of *reasonable suspicion* that the person is or may be, a person who commits, attempts to commit, participates in or facilitates the commission of acts of terrorism or merely a person identified in the Council Decision. The order also applies to those allegedly controlled either directly or indirectly, or acting on behalf of or at the direction of a designated person. Designation imparts a very onerous regime on those selected. No one including the designated person may deal with funds or economic resources belonging to, owned or held by a person referred to in the order, unless he does so under the authority of a licence granted by the Treasury. A person who contravenes the prohibition is guilty of an offence. The phrase "deal with" in this order was written in terms which are designed to catch every imaginable kind of transaction in respect of funds and economic resources. The treasury may authorise certain transactions under a licence to. These may be general or granted to a category of persons or to a particular person, they may be subject to conditions and may be of indefinite duration or subject to an expiry date. The Treasury may vary or revoke the licence at any time. This gave extraordinary power to HM Treasury in respect of persons assets without that person being convicted charged arrested or even questioned over their alleged involvement in terrorism.

In August 2009 the Terrorism (United Nations Measures) Order 2009[10] (SI 2009/1747), came into force. Like the 2001 and 2006 Terrorism Orders, to give effect to SCR 1373(2001). It revoked the 2006 Order, but it provided that persons who had been designated under the 2006 Order were to remain subject to its terms until 31 August 2010, unless their designation was revoked by that date.

There were some technical differences between the 2006 and the 2009 Orders, such as to the definition of dealing with an economic resource, which improved to a slight degree the difficult effects of the regime on spouses and other third parties who interacted with the designated person. The prohibitions that the 2009 Order imposed on making funds, financial services available for their benefit and on making economic resources available to them or for their benefit, apply only if the benefit that the person would obtain or is able to obtain is significant. An additional pre-condition for designation is that the Treasury must consider that the direction is necessary for purposes connected with protecting members of the public from the risk of terrorism. Subject to these minor adjustments, the impact of the regime on the designated person himself continued as rigorously as it



was under the 2006 Order, and the phrase “*reasonable grounds for suspecting*” in the 2006 Order was retained in the 2009 Order.

The Al-Qaida and Taliban Order

The Treasury's response to the Security Council's directions that measures that were to be taken to deal with Al-Qaida, Usama bin Laden, the Taliban and other individuals, groups undertakings and entities associated with them as designated by the committee established pursuant to SCR 1267 was to make the Al-Qaida and Taliban (United Nations Measures) Order 2002[11] (SI 2002/111). It was replaced by Al-Qaida and Taliban (United Nations Measures) Order 2006[12] in November 2006. As in the case of the TO, this Order sets out a rigorous system of prohibitions and licences which is applied to persons who are designated persons for its purposes. The Treasury's may give a direction that a person identified in the direction is designated for the purposes of this Order, if they have *reasonable grounds for suspecting* that the person is or may be, Usama bin Laden, a person designated by the Sanctions Committee, a person owned controlled by a designated person or a person acting on behalf of or at the direction of a designated person. The Treasury were given the power to vary or revoke these directions at any time.

The Issues

The fundamental issue with the *HM Treasury v A* case was whether or not the Treasury, in effect the executive, were empowered by the United Nations Act to allow the introduction of both the Terrorism Order and the Al-Qaida Order, by Order in Council. The contention was that these Orders were *ultra vires* on three grounds. Firstly they passed into effect without Parliamentary scrutiny, secondly they lacked legal certainty and proportionality and thirdly there was no procedure available to allow any challenge to their designation on the list in the first place. From a Human Rights perspective it was argued that both sets of Orders were incompatible with article 8[13] article 1 of Protocol 1[14] of the European Convention on Human Rights. There was also a complaint regarding the lack of access to a court for an effective remedy[15].

The Facts of the Ahmed Case

A, K and M are brothers with UK citizenship. In August 2007 they received letters which stated that under the Terrorism Order (TO) a direction had been made because the Treasury had reasonable grounds for suspecting that they were persons who facilitate or commit acts in the commission of terrorism. The restrictions they were placed under as a result of designation put a great burden on their wives and families, created significant mental health difficulties and ultimately have been blamed on the breakdown of their marriages.

It is important to reiterate that A, K and M, have never been charged with or arrested for any terrorism related offence. It was until September 2007 that the Treasury provided some details about the factual basis for the decision to make the directions, although this was limited again due to the sensitive nature of some of the material

G, another appellant, was also informed in December 2006 that a direction had been made against him under the TO. He was not told until later that his original listing had been at the request of the United Kingdom. It was not until March 2007 that he was told that his listing meant that he was now a designated person under the AQO.



They all issued proceedings in the Administrative Court, seeking to set aside the directions made against them in pursuance of the two orders made by the Treasury. In April 2008 Collins J held that the TO and the AQO were *ultra vires* and he quashed both Orders[16]. Following an appeal by the treasury in October 2008 the Court of Appeal allowed the appeal in part. It held that the provisions of the AQO were lawful but stated that any person designated under these orders was entitled to seek judicial review of the merits of the decision. A, K, M and G were also given leave to appeal by an appeal in March 2009. The third proceedings were brought by HAY an Egyptian national, who also is resident in the United Kingdom. His name was added to the Consolidated List by the 1267 Committee in September 2005. As a result he also became a designated person for the purposes of the AQO. Unlike G, the proposal that his name be added to the list was not made by the United Kingdom. It provided no information to the 1267 Committee in relation to its decision to add his name. Numerous attempts by Hays legal team via the FCO failed to establish which state had in fact designated him although it was understood not to be the UK. In fact the Foreign Secretary has made an application to the 1267 Committee for HAY's name to be removed from the list, as he considers that HAY's listing is no longer appropriate. The High Court[17] concluded that the AQO was *ultra vires* the 1946 Act. The Court held that the practical effect of the AQO was to preclude access to the Court for protection of what HAY contended were his basic rights. The Treasury appealed against this decision. In response to representations made by HAY's solicitors the Treasury amended his licence conditions which enable his wife to obtain welfare benefits. However despite the Home secretaries intervention Hay must remain subject to the AQO unless and until the 1267 Committee decides to remove him from the Consolidated List.

The TO and AQO impose extremely onerous regimes, every transaction, however small, which involves the making of any payments or the passing of funds or economic resources whether directly or indirectly for the benefit of a designated person is criminalised. This affects all aspects of life, including the ability to move around at will by any means of private or public transport. To enable payments to be made for basic living expenses a system of Treasury regulated licensing has been created, There interpretation of the sanctions regime and of the system of licensing and the conditions that it gives rise to is extremely rigorous. The overall result is very burdensome on all the members of the designated person's family. Sir Anthony Clarke MR accepted that the orders are oppressive in their nature and that they are bound to have caused difficulties for the appellants and their families[18]. Wilson LJ said that they imposed 'swingeing disabilities upon those who were designated.'[19] The House of Lords described the regime as it applied to HAY's wife as 'disproportionate and oppressive'. They continued that the invasion of the privacy of someone who was not a listed person as 'extraordinary.'[20]

The Judgement

The Supreme Court ruled by majority that both Orders were *ultra vires*, albeit on slightly different grounds. Lord Brown dissenting on the AQO on the grounds that the wording of the order was the same as the UNSCR and therefore was a direct compliance of the UNSCR which the UK was obliged to carry out as a member of the UN no matter what the Court felt. This meant in his opinion that, in the presence of a clear UN mandate, the principles governing the separation of powers and the protection of human rights within the UK would have had to bend before the need to fulfil UN Charter obligations.

The majority felt that there was no indication that Parliament had anticipated the adoption of such draconian measures when it enacted the 1946 Act.[21] On the contrary, the Court applied the "Simms principle[22]" which dictated that Parliament could only depart from fundamental rights



through express and unambiguous language. When the measures required by a UN Resolution affect the rights of an individual so profoundly there were limits to their adoption by means of Orders in Council under the general enabling power of the 1946 Act.

The Court held that the TO was ultra vires by introducing a “reasonable suspicion” test, it went beyond the requirements of Resolution 1373 and therefore beyond what is allowed under executive discretion granted by the 1946 Act (Lord Rodger dissenting). Only Parliament could properly decide to impose more stringent measures upon individuals than provided for in a UN measure, (Lord Rodger agreeing). Lord Brown would have allowed “reasonable grounds for believing[23]” and Lord Mance suggested proof on the ‘balance of probabilities’.[24] Lord Rodger even accepted “reasonable suspicion” as “expedient” within section 1(1) of the 1946 Act, albeit only on a temporary basis pending rapid replacement by an Act of Parliament.[25] Lord Phillips suggested that the purpose of the Resolution extended only to freezing the assets of “criminals” and not mere “suspects”, [26] an argument rejected by Lord Rodger as “an impractical approach which would emasculate the very international system the Security Council wished to create.[27]”

The court held that the orders went beyond their limit when even though the executive measure fell within the scope of a UNSC Resolution, the interference with fundamental rights was such that it could only be authorised by the democratically elected Parliament. In the absence of any effective and independent review at UN level it left no means to contest their designation. The Court did clarify that although Article 103 of the UN Charter displaced the applicants' ECHR rights and thus prevented any claim that the AQO was unlawful under the Human Rights Act, the right of access to a court had long been recognised in the common law as fundamental to the rule of law, and could only be overridden by clear Parliamentary wording.

Restrictions upon the rights of citizens were made conditional upon the explicit seal of the democratic process. Lord Brown, dissenting in part, identified a “clash of conflicting principles”[28] on the one hand, the UK's UN Charter obligations, and on the other the *Simms principle* that human rights infractions need to be explicitly sanctioned by Parliament. Lord Brown concluded that, while the TO was ultra vires the 1946 Act, the AQO was not because it was categorically mandated by a UNSC Resolution. Lord Brown thus resolved the conflict by giving precedence to the UK's duty under Article 25 of the UN Charter to carry out UNSC Resolutions. The majority rejected such a conclusion; they felt that such restrictions upon individual rights always need Parliament's express consent. While Parliament can choose to legislate contrary to fundamental rights, it can also decide that certain measures required by a UNSC Resolution are too onerous to be given direct effect in the UK through secondary legislation.

The Treasury reacted to the Supreme Court's judgment by publishing the Draft Terrorist Asset-Freezing Bill 2010 and by securing the rapid passage of the Terrorist Asset-Freezing (Temporary Provisions) Act 2010. The latter deems all of the impugned Orders in Council under the 1946 Act to have been validly adopted and therefore retains in force all directions made under those Orders regardless of the fact that the Home Secretary wished Hays to be removed from the designated list. The Act expired in December 2010, and was replaced by the Terrorism Asset Freezing Etc Act 2010. This Act now provides a statutory basis for the UK's asset freezing regime. Under this new act there are two designation powers available to the treasury, final and interim. Interim designations are based on the lower ‘reasonable suspicion’ standard rather than the more generally accepted ‘reasonable belief’. Interim designations only may last up to 30 days, but can be renewed, while final designations based on ‘reasonable belief’ expire one year from being made unless also renewed. There is a provision within the act which provides for judicial review of any Treasury



decision made but that is unlikely to help anyone placed on the UNs consolidated list. It would appear that victory of the successful applicants in the *Ahmed* case has proved extremely short-lived.

In December 2011 the first report into the operation of the Terrorism Freezing Etc Act 2010 was published.[29] The author considered the lack of funds seized and numbers of persons involved make this an ancillary rather than central part of the UK fight against terrorism. A positive note was that to incur designation now required both a necessity to protect the public and the burden of *reasonable belief* rather than *reasonable suspicion*. Although it was found to questionable if the required necessity test had been met in all cases[30]. There is a recommendation that the HM Treasury should be required to explain to Parliament the basis on which it considers the necessity test will be satisfied and that it is proportionate. The report recognises the lack of judicial input into designation process such as required in the use of control orders and unlike the procedure adopted in France and Ireland[31]. This gives wide powers to the executive and recommends that it should be a last option with prosecution being preferred with its inherent protections for the accused. Improved clarity in Treasury reports and its website is recommended to improve transparency of the Act as a whole. Licensing and compliance under the Act needs to be clearer in order assist those designated in understanding what they are and are not permitted to do[32]. There was also concern that the names of those designated are made public without the person being in a position to know the case against them or defend themselves in any way from it. The author of the report acknowledges many improvements over the previous regime and cooperation from the Treasury itself as well as a sharp decline in the number of people designated.[33]

Conclusion

This case is important for a number of reasons. On a constitutional level what started as a narrow interpretation of section 1 on the 1946 United Nations Act took on enormous significance. Critics may argue that there was a lack of consistency in the Lordships judgements and that the decision itself in this case is divisive, however taken overall the Court has produced a coherent view. In the main they suggested that to implement such measures which directly affect in such a grave manner an individual's fundamental rights is a matter that should be put before Parliament and not left to the Executive alone. Unfortunately their reasoning that this would allow full democratic debate before implementation has proved imaginary. Lord Rodger in his judgement stated that it really did not matter by what means the SCR's were introduced into our domestic law, as introduced they inevitably will be because of our international obligations under the UN Charter. Whilst ultimately this has have turned out to be true, perhaps he misses the point, that under the UK's duellist system it should be for Parliament to discuss the ramifications to our democratic society of implementing international measures that have such a draconian effect on an individual's rights. There is a danger that by accepting these resolutions of what Stone refers to as 'incremental infringement' that is, Parliament accepts one type of control as necessary in one area of law which may then justify its application to another[34].

This Court's ultimate decision to find both orders *ultra vires* does show an attempt to protect the individual from excessive executive power, whilst supporting the concept of Parliamentary supremacy and the respect of the judiciary for the separation of those powers, contrary to much recent media reporting. The Government in turn has shown unwavering support for almost unrestricted authority of the UNSC with their innate lack of effective judicial review or democratic accountability. The UN is essentially a political body that has none of the inherent safeguards we consider necessary to protect those subject to decisions in a democracy. Surprisingly perhaps the ECtHR has effectively played no part in protecting an individual from the excess of any SCR, they



have made clear in various judgements that under article 103, the UNSC will always take precedent over any other international agreement.

Whilst the primary aim of the UN is the maintenance of international peace and security, it seems that when doing so human rights are seen as secondary, there is a disregard for fundamental rights and an inherent lack of judicial protection available to those subjected to these sanctions as shown in *A* case. The view that peace and security and fundamental human rights are mutually exclusive is thought by some, if not all commentators to be simply untrue^[35]. They argue that any lasting strategy for peace and security that is not anchored in respect for human rights and civil liberties is essentially a strategy of insecurity^[36]. Whilst this is clearly only one view, it could be argued that whenever national or international security is threatened states should uphold human rights not dispose of them on the grounds they are luxuries that cannot be supported. Fundamental rights such as a fair trial, family life, peaceful enjoyment of possessions and an effective judicial review are surely equally important to a strong democratic society as are peace and security. These rights are clearly missing from the SCR now implemented into UK domestic law. One view is that by treating both security and human rights as equal, it may actually lead to a more ‘rights’ based democratic society, one possibly be less susceptible to cause and effect of terrorism in the first place.

The reasoning behind the sanctions imposed by the UN are of course laudable in their overall aims of attempting to maintain peace and security by suppressing international terrorism, one that operates without borders or even a substantive organisation to hold to account. However to use such a blunt international instrument as UN sanctions against individuals with its real and personal consequences as shown in the *A* case is something that Parliament was unlikely to have foreseen when it introduced the UN Act in 1946 and one that should have perhaps been debated more stridently by Parliament before introducing any new asset freezing legislation. Whilst this lack of real debate is disappointing it is not surprising when considered in the historical context of terrorism debates generally within Parliament.

Lord Rodger stated in the *A* case that those subjected to these measures are effectively ‘*prisoners of the state*’. As a permanent member of the Security Council it appears that the UK government has done little to uphold our own democratic principles within the asset freezing regime currently initiated by the UN. Although these sanctions are not supposed to be criminal in nature but a preventative civil measure, those subjected to them, many for over ten years now, they may have good grounds to suggest they are in effect a punitive measure with few safeguards available under national law. Generally speaking the UK has a robust human rights protective mechanism in form of the Human Rights Act enshrining rights agreed in ECHR, however the *A* case and the subsequent implementation of the new asset freezing legislation has highlighted the vulnerability to interference and erosion of those rights through instigating SCR at the international level, something perhaps we should all be concerned about.

About the author: *Joe Stevens is a third year PhD candidate at the University of Bedfordshire, he is particular interested in the area of human rights and terrorism, he is researching from a human rights perspective the main issues in relationship to the United Nations efforts to control and suppress terrorism and the use of targeted sanctions against individuals. Joe obtained a first in his LLB(Hons) in 2008 and a merit in his LLM which was in International Criminal Law and Security in 2010, both of which are from the University of Northampton his home town. On completion of his PhD Joe hopes to become a university lecturer. Joe is married with two grown up and one young child. In his spare time he enjoys flying having obtained his private pilot’s licence (PPL) in May 2010.*



Notes:

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[2] *HM Treasury v A (and others)* [2010] UKSC 2

[3] The Charter of the United Nations at <http://www.un.org/en/documents/charter/>, accessed 2 March 2012, fully lists the charter articles.

[4] For a full discussion of the implications and meaning of Article 103 see; Rain Liivoja, *The scope of the supremacy clause of the United Nations Charter*; 2008, *International & Comparative Law Quarterly*, 57(3), 583-612

[5] B Simma (Ed), *The Charter of the United Nations, A Commentary*, OUP (2nd Ed) 2002, p1295

[6] See full list of all UN SCR at: <http://www.un.org/documents/scres.htm>, accessed 2 March 2012.

[7] Simma, *op cit*, p 737

[8] The 1946 United Nations Security Council Resolution 67 states: "If, under article 41 of the Charter of the United Nations signed at San Francisco on 26 June 1945 (being the article which relates to measures not involving the use of armed force) the Security Council of the United Nations call upon His Majesty's Government in the United Kingdom to apply any measures to give effect to any decision of that Council, His Majesty may by Order in Council make such provision as appears to Him necessary or expedient for enabling those measures to be effectively applied, including (without prejudice to the generality of the preceding words) provision for the apprehension, trial and punishment of persons offending against the Order."

[9] Full details of Order at: <http://www.opsi.gov.uk/si/si2006/20062657.htm>, accessed 2 March 2012

[10] Full details of Order at: http://www.opsi.gov.uk/si/si2009/uksi_20091747_en_1, accessed 2 March 2012

[11] <http://www.opsi.gov.uk/SI/si2002/20020111.htm>, accessed 3 March 2012

[12] <http://www.opsi.gov.uk/SI/si2006/20062952.htm>, accessed 3 March 2012

[13] Right to family life, privacy and correspondence

[14] The enjoyment of property

[15] Article 6 Right to fair trial

[16] *HM Treasury v Ahmed (and others)* [2008] EWHC 869 (Admin), [2008] 3 All ER 361

[17] [2009] EWHC 1677 (Admin)

[18] [2009] 3 WLR 25, para 25

[19] *R(M) v HM Treasury* [2008] 2 All ER 1097 para 152

[20] *R(M) v HM Treasury* [2008] 2 All ER 1097, para 15

[21] As per Lords Hope (with whom Lord Walker and Lady Hale agreed) para 61, Lord Phillips para 145-155 and Lord Mance para 239-241

[22] *R v. Home Secretary ex parte Simms* [1999] 1 A.C. 69

[23] Lord Brown at para 199

[24] Lord Brown at para 230

[25] Lord Rodger at para 176

[26] Lord Phillips at para 129-143

[27] Lord Rodger at para 170

[28] Lord Brown at para 195



[29] David Anderson, FIRST REPORT ON THE OPERATION OF THE TERRORIST ASSET-FREEZING ETC. ACT 2010, (Dec 2011), The Stationary Office, London

[30] Ibid p4

[31] Ibid p68

[32] Ibid p72

[33] Ibid David Anderson, the numbers have dropped from 149 at the start of 2009 to 38 in Sep 2011

[34] Stone, Civil Liberties & Human Rights, (6th Ed) 2006, Oxford p9

[35] See for example those who advocate a strong human rights approach: Christina Pantazis, Simon Pemberton, From the "old" to the "new" suspect community: examining the impacts of recent UK counter-terrorist legislation, 2009, British Journal of Criminology; O Fiss, The War Against Terrorism and the Rule of Law (2006) 26 OJLS 235-256.; see for example those who suggest the more open a democracy, the more likely terrorists can operate within it; James Lutz & Brenda Lutz, Democracy & Terrorism, Perspectives on Terrorism, a Journal of the Terrorism Research Initiative, 2010, Vol 4 No1 p1

[36] Dora Kostakopoulou, How to do Things with Security Post 9/11, Oxford Journal of Legal Studies Vol: 28,(2) pp317-342.