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Reform of Northern Ireland Credit Unions: Terrorist Asset- Freezing (Temporary Provisions) Bill 2010

1 Introduction

As part of the wider reform of Northern Ireland credit union regulation, a legislative intervention at Westminster, to amend the Counter-Terrorism Act 2008ⁱ, has been proposed. The proposal is necessitated by the wider transfer of regulation from the Department of Enterprise, Trade and Investment (DETI) to the Financial Services Authority (FSA).

A legislative consent motion on the amendment is scheduled to appear before the Assembly on 11 October 2010.ⁱⁱ At the time of writing the terms of this motion are yet to be confirmed.

The following paper outlines the proposed amendment, which will be brought forward through clauses in the Terrorist Asset-Freezing (Temporary Provisions) Bill 2010.

2 The Counter-Terrorism Act 2008

The Counter-Terrorism Act 2008 (the Act) includes provisions:

*...relating to: the gathering and sharing of information for counter-terrorism and other purposes, including the disclosure of information to and by the intelligence services; post-charge questioning of terrorism suspects; the prosecution of terrorism offences and punishment of convicted terrorists; notification requirements for persons convicted of terrorism-related offences; powers to act against terrorist financing, money laundering and certain other activities...*ⁱⁱⁱ

Schedule 7, Part 5, of the Act defines the ‘*enforcement authorities*’ that have responsibility for enforcing ‘*terrorist financing and money laundering*’ regulations. The Department of Enterprise, Trade and Investment is named as the enforcement authority ‘*in relation to credit unions in Northern Ireland*’.^{iv}

Part 8 of the same Schedule names the Department as the supervisory authority for credit unions in Northern Ireland.^v The role of a supervisory authority, within the context of the Act, is to:

...take appropriate measures to monitor persons operating in the financial sector for whom it is the supervisory authority for the purpose of securing compliance by those persons with the requirements of any directions under this Schedule.^{vi}

The same section of the Act names the Financial Services Authority as the supervisory authority for ‘*credit institutions that are authorised persons*’ and ‘*financial institutions (except money service businesses that are not authorised persons and consumer credit financial institutions)*’. The Office of Fair Trading is designated as the supervisory authority for ‘*consumer credit financial institutions*’ and HM Revenue and Customs is named as the supervisory authority for ‘*money service business that are not authorised persons*’.^{vii}

3 The Terrorist Asset-Freezing (Temporary Provisions) Bill 2010

The Terrorist Asset-Freezing (Temporary Provisions) Bill 2010 (the Bill) is divided into three parts. Part 1 of the Bill will provide the ‘*Treasury with the power to implement an asset-freezing regime*’. Part 3 contains a number of final provisions. It is Part 2 of the Bill, however, that is of relevance here as this section reforms Schedule 7 of the Counter-Terrorism Act 2008 as outlined above.^{viii}

Specifically, Clause 45 of the Bill transfers the enforcement and supervisory functions, in relation to Northern Ireland Credit Unions, from DETI to the FSA. The transfer of powers ‘*reflects the wider policy intention to transfer the supervision of Northern Ireland credit unions from DETI to the FSA, which is likely to take place in 2011.*’^{ix}

The technical effect of Clause 45 is to remove references to DETI from Schedule 7, Part 5 and Part 8, of the Counter-Terrorism Act 2008.

Clause 49 of the Bill sets out the timetable for commencement of the Bill. Subsection 2 provides that Clause 45 be ‘*commenced by order*’^x A Commencement Order is a form of Statutory Instrument which is designed to bring into force the whole or part of an Act of Parliament at a date later than the date of the Royal Assent.^{xi}

4 Further Information

The second reading of the Bill took place on the 27 July 2010 in the House of Lords. The Committee stage of the Bill is scheduled to begin on 6 October 2010.^{xii} Parts 1 and 2 of the Bill, except for Clause 45, will come into force on the day after Royal Assent has been obtained. Clause 45 is to be commenced by order (according to Clause 49 of the Bill).^{xiii} In a letter to the Chairperson of the Committee for Enterprise, Trade and Investment, the Minister notes that it not anticipated that the provision will be commenced before the latter part of 2011.^{xiv}

On the subject of the transfer of functions proposed in the Bill HM Treasury has noted:

*The transfer of functions under Schedule 7 to the Counter-Terrorism Act 2008 is likely to require transitional arrangements to be put in place to deal with, for example, existing investigations or enforcement action, and it is accordingly considered that it is necessary for the order providing Clause 45 to come into effect to also be capable of making provision for these transitional arrangements. **The transitional arrangements will be determined as part of the wider consideration of the transfer of regulation of Northern Ireland credit unions from DETI to the FSA. As the transitional provision will be contained in a commencement order, they will not be subject to Parliamentary scrutiny.** (Emphasis added).^{xv}*

Clause 45 apart, the Bill does not contain any other provisions that would require a legislative consent motion in Northern Ireland.^{xvi}

ⁱ The Counter-Terrorism Act 2008 <http://www.legislation.gov.uk/ukpga/2008/28/contents> (accessed 04/10/10)

ⁱⁱ Northern Ireland Assembly *Provisional Order Paper, Monday 11 October 2010*

ⁱⁱⁱ The Counter-Terrorism Act 2008, *Explanatory Notes*
<http://www.legislation.gov.uk/ukpga/2008/28/notes/division/2?type=en> (accessed 04/10/10)

^{iv} The Counter-Terrorism Act 2008 Schedule 7, Part 5, s1(c)
<http://www.legislation.gov.uk/ukpga/2008/28/contents> (accessed 04/10/10)

^v *Ibid* Schedule 7, Part 8 s2(d)

^{vi} *Ibid* Schedule 7, Part 8 s1

^{vii} *Ibid* Schedule 7, Part 8 s2(a-c)

^{viii} HM Treasury, *Terrorist Asset-Freezing etc. Bill: Memorandum by HM Treasury for the House of lords Delegated Powers and Regulatory Reform Committee* DPRR/10-11/10 (14 July 2010)

<http://www.parliament.uk/pagefiles/33322/Memorandum.doc> (accessed 30/09/10)

^{ix} *Ibid*

^x Terrorist Asset-Freezing etc Bill as introduced to the House of Lords 15 July 2010 – Explanatory Notes
<http://www.publications.parliament.uk/pa/ld201011/ldbills/015/en/2011015en.htm>

^{xi} UK Parliament – Glossary, *Commencement Order* <http://www.parliament.uk/site-information/glossary/commencement-order/> (accessed 04/10/10)

^{xii} UK Parliament *Bills before Parliament 2010-11 – Terrorist Asset-Freezing etc Bill*
<http://services.parliament.uk/bills/2010-11/terroristassetfreezingetchl.html> (accessed 04/10/10)

^{xiii} Terrorist Asset-Freezing etc Bill as introduced to the House of Lords 15 July 2010 – Explanatory Notes
<http://www.publications.parliament.uk/pa/ld201011/ldbills/015/en/2011015en.htm>

^{xiv} Letter from the Office of the Minister for Enterprise, Trade and Investment to the Chairperson of the Committee for Enterprise, Trade and Investment, *Reform of NI Credit Unions: Terrorist Asset-Freezing Bill* 16 September 2010

^{xv} HM Treasury, *Terrorist Asset-Freezing etc. Bill: Memorandum by HM Treasury for the House of lords Delegated Powers and Regulatory Reform Committee* DPRR/10-11/10 (14 July 2010)
<http://www.parliament.uk/pagefiles/33322/Memorandum.doc> (accessed 30/09/10)

^{xvi} Terrorist Asset-Freezing etc Bill as introduced to the House of Lords 15 July 2010 – Explanatory Notes
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