

2020 No.36

CRIMINAL LAW

The Andrey Lugovoy and Dmitri Kovtun Freezing Order 2020

Approved by both Houses of Parliament

Made - - - - at 9.30 a.m. on 17th January 2020

Laid before Parliament at 1.00 p.m. on 17th January 2020

Coming into force - - - - 19th January 2020

The Treasury believe that action constituting a threat to the life of one or more nationals or residents of the United Kingdom has been taken by certain persons who are residents of a country or territory outside the United Kingdom.

The Treasury, in exercise of the powers conferred by sections 4 and 14 of and Schedule 3 to the Anti-terrorism, Crime and Security Act 2001(a), and having consulted the Secretary of State in accordance with section 10(5) of that Act, make the following Order.

Citation, commencement, extent and application

1.—(1) This Order may be cited as the Andrey Lugovoy and Dmitri Kovtun Freezing Order 2020 and shall come into force on 19th January 2020.

(2) Subject to paragraph (3) this Order extends to the United Kingdom.

(3) The prohibitions imposed by article 4 apply to the following persons—

- (a) a person in the United Kingdom;
- (b) any person elsewhere who is—
 - (i) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;
 - (ii) a person who under the British Nationality Act 1981(b) is a British subject;
 - (iii) a British protected person within the meaning of that Act;
 - (iv) a body incorporated under the law of any part of the United Kingdom.

Interpretation

2.—(1) In this Order—

“the 2000 Act” means the Financial Services and Markets Act 2000(c);

(a) 2001 c.24.
(b) 1981 c.61.
(c) 2000 c.8.

“body corporate” includes a Scottish partnership and “a body incorporated under the law of any part of the United Kingdom” is to be interpreted accordingly;

“frozen funds” has the meaning in article 4(1);

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

- (a) gold, 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 or other income on or value accruing from or generated by assets;
- (e) credit, rights of set-off, guarantees, performance bonds or other financial commitments;
- (f) letters of credit, bills of lading, bills of sale; and
- (g) documents providing evidence of an interest in funds or financial resources.

(2) In this Order “relevant institution” means—

- (a) a person who has permission under Part 4A of the 2000 Act^(a) (permission to carry on regulated activities); and
- (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to the 2000 Act (EEA passport rights)^(b) which has permission under paragraph 15 of that Schedule^(c) (as a result of qualifying for authorisation under paragraph 12 of that Schedule)^(d) to accept deposits.

(3) The definition of “relevant institution” in paragraph (2) must be read with—

- (a) section 22^(e) of the 2000 Act (regulated activities),
- (b) any relevant order under that section^(f), and
- (c) Schedule 2^(g) to the 2000 Act (regulated activities).

Specified persons

3.—(1) The following are specified persons for the purposes of this Order (being persons believed by the Treasury to have taken action constituting a threat to the life of one or more nationals or residents of the United Kingdom)—

- (a) Andrey Lugovoy; and
- (b) Dmitri Kovtun.

(2) If a specified person makes a written request, the Treasury must as soon as is practicable, and in writing, give him the reason why he has been specified.

(a) Part 4A was inserted by the Financial Services Act 2012(c.21), section 11(2) and amended by S.I. 2013/504, S.I. 2013/1773, S.I. 2013/1797, S.I. 2013/3115, S.I. 2015/486, S.I. 2015/575, S.I. 2015/910, S.I. 2015/1882, S.I. 2016/225, S.I. 2016/680, S.I. 2016/1239, S.I. 2017/701, S.I. 2017/1064, S.I. 2017/1212, S.I. 2018/135, S.I. 2018/546 and S.I. 2018/698.

(b) As amended by S.I. 2006/3221 and S.I. 2013/3115; it is prospectively amended by S.I. 2018/1149.

(c) As amended by S.I. 2003/2066, S.I. 2007/3253, S.I. 2012/1906, S.I. 2013/1881 and S.I. 2015/575.

(d) As amended by S.I. 2007/126, S.I. 2007/3253, S.I. 2012/1906 and 2017/701.

(e) Section 22 was amended by the Financial Services Act 2012 (c.21), section 7(1); section 27(4) of the Financial Guidance and Claims Act 2018 (c.10); and S.I. 2018/135.

(f) S.I. 2001/544 as amended, most recently by S.I. 2019/1067 and prospectively amended by S.I. 2018/1403.

(g) Schedule 2 was amended by the Regulation of Financial Services (Land Transactions) Act 2005 (c.24), section 1, the Dormant Bank and Building Society Accounts Act 2008 (c.31), section 15, Schedule 2, paragraph 1, the Financial Services Act 2012 (c.21), section 7(2) to (5) and section 8, the Financial Guidance and Claims Act 2018 (c.10), section 27(1) and (13) and S.I. 2013/1881; it is prospectively amended by S.I. 2018/135.

Freezing prohibitions

- 4.**—(1) The provisions of this article apply in relation to the following funds (“frozen funds”)—
- (a) funds owned, held or controlled by Andrey Lugovoy; and
 - (b) funds owned, held or controlled by Dmitri Kovtun.
- (2) A person must not make frozen funds available to or for the benefit of a specified person.
- (3) A person must not make frozen funds available to a person at the direction or instruction of a specified person.
- (4) A person must not deal with frozen funds.
- (5) For the purposes of this article, making funds available to or for the benefit of a specified person includes—
- (a) allowing a specified person to withdraw from an account;
 - (b) honouring a cheque payable to a specified person;
 - (c) crediting a specified person’s account with interest;
 - (d) releasing documents of title (such as share certificates) held on behalf of a specified person;
 - (e) making available the proceeds of realisation of property belonging to a specified person; and
 - (f) making a payment to or for the benefit of a specified person.
- (6) In this article “deal with” means—
- (a) use, alter, move, allow access to or transfer;
 - (b) deal with in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination; or
 - (c) make any other change that would enable use, including portfolio management.

Freezing prohibitions: offences

- 5.**—(1) A person referred to in article 1(3) who fails to comply with a prohibition imposed by article 4 commits an offence.
- (2) A person who engages in an activity knowing or intending that it will enable or facilitate the commission by another person of an offence under paragraph (1) commits an offence.
- (3) It is a defence to the offences in this article for a person (“P”) to prove that P did not know and had no reason to suppose that—
- (a) in relation to the prohibition in article 4(2), the person to whom or for whose benefit frozen funds were made available, or were to be made available;
 - (b) in relation to the prohibition in article 4(3), the person at the direction or instruction of whom frozen funds were made available, or were to be made available;
 - (c) in relation to the prohibition in article 4(4), the person who owned, held or controlled the frozen funds,
- was a specified person.

Licensing

- 6.**—(1) The Treasury may, by licence, authorise frozen funds to be made available.
- (2) A licence may authorise a person to deal with frozen funds.
- (3) The prohibitions in article 4 do not apply in respect of frozen funds made available or dealt with in accordance with a licence granted under this article.
- (4) A licence may be—
- (a) of indefinite duration or subject to an expiry date;

- (b) subject to conditions;
 - (c) granted generally or to a person or persons named or described in the licence;
 - (d) granted in relation to frozen funds generally or to funds of a description specified in the licence.
- (5) A licence may authorise funds to be made available—
- (a) generally or for purposes specified in the licence;
 - (b) to or for the benefit of persons generally or a person or persons named or described in the licence.
- (6) The Treasury may vary or revoke a licence at any time.
- (7) The Treasury, where they grant, vary or revoke a licence, must—
- (a) in the case of a licence granted to a particular person, give written notice of the licence, 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 Treasury consider appropriate to publicise the licence, variation or revocation.

Licensing procedure and offences

- 7.—(1) A person applying for a licence must—
- (a) apply in writing; and
 - (b) include such documentation and information that may be required for taking the relevant licensing decision.
- (2) The Treasury—
- (a) are not required to consider an application which is incomplete; but
 - (b) if an application is incomplete, must inform the applicant of the further documentation or information required.
- (3) The Treasury may grant a licence without an application having been made.
- (4) The Treasury may authorise a person to grant licences on their behalf.
- (5) A person (“P”) who provides information, or produces a document, which P knows is false in a material particular with a view to obtaining a licence is guilty of an offence.
- (6) A person who recklessly provides information, or produces a document, which is false in a material particular with a view to obtaining a licence is guilty of an offence.

Information

8. The Schedule (which contains provisions concerning information and documents, and disclosure) has effect.

Penalties

- 9.—(1) A person guilty of an offence under article 5 is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine, or to both;
 - (b) on summary conviction—

- (i) in England and Wales, to imprisonment for a term not exceeding 12 months (or, in relation to offences committed before section 154(1) of the Criminal Justice Act 2003^(a) comes into force, 6 months) or to a fine, or to both;
 - (ii) in Scotland, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both;
 - (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.
- (2) A person guilty of an offence under article 7 or under the Schedule is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both;
 - (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding 12 months (or, in relation to offences committed before section 154(1) of the Criminal Justice Act 2003 comes into force, 6 months) or to a fine, or to both;
 - (ii) in Scotland, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both;
 - (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.

Offences: procedure

10.—(1) Proceedings for an offence under this Order are not to be instituted in England and Wales except by or with the consent of the Treasury or the Director of Public Prosecutions.

(2) Proceedings for an offence under this Order are not to be instituted in Northern Ireland except by or with the consent of the Treasury or the Director of Public Prosecutions for Northern Ireland.

(3) Despite anything in section 127(1) of the Magistrates’ Courts Act 1980^(b) (information to be laid within 6 months of offence) an information relating to an offence under this Order which is triable by a magistrates’ court in England and Wales may be so tried if it is laid at any time in the period of one year starting with the date of the commission of the offence.

(4) In Scotland summary proceedings for an offence under this Order may be commenced at any time in the period of one year starting with the date of the commission of the offence.

(5) In its application to an offence under this Order article 19(1)(a) of the Magistrates’ Courts (Northern Ireland) Order 1981^(c) (time limit within which complaint charging offence must be made) is to have effect as if the reference to six months were a reference to twelve months.

Offences by bodies corporate etc.

11.—(1) If an offence under this Order—

- (a) is committed by a body corporate, and
- (b) is proved to have been committed with the consent or connivance of an officer, or to be attributable to any neglect on the officer’s part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) For the purpose of paragraph (1) these are officers of a body corporate—

(a) 2003 c.44; subsections (4) and (6) of section 154 were amended by the Tribunals, Courts and Enforcement Act 2007 (c.15), section 62(3), Sch 13, paras 153, 154(1) and (2); section 154(8) was added by the same Act, section 62(3), Sch 13, paras 153 and 154(1) and (3).

(b) 1980 c.43.

(c) S.I. 1981/1675 (N.I. 26).

- (a) a director, manager, secretary or other similar officer of the body;
- (b) any person purporting to act in any such capacity;
- (c) in the case of a Scottish partnership, a partner.

(3) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were an officer of the body.

Notices

12.—(1) This article has effect in relation to any notice to be given to a person (“P”) by the Treasury under article 6.

(2) Any such notice may be given—

- (a) by posting it to the last known address of P; or
- (b) where P is a body corporate, by posting it to the registered or principal office of the body corporate.

(3) Where the Treasury do not have an address for P, they must make arrangements for the notice to be given to P at the first available opportunity.

Supplemental amendments

13.—(1) Part 3 of the Schedule to the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018(a) is amended as follows.

(2) In paragraph 93—

- (a) for “Andrey Lugovoy and Dmitri Kovtun Freezing Order 2018” substitute “Andrey Lugovoy and Dmitri Kovtun Freezing Order 2020”;
- (b) omit sub-paragraph (a).

(3) In the heading to paragraph 93 for “Andrey Lugovoy and Dmitri Kovtun Freezing Order 2018” substitute “Andrey Lugovoy and Dmitri Kovtun Freezing Order 2020”.

David Rutley
Mike Freer

At 9.30 a.m. on 17th January 2020 Two of the Lords Commissioners of Her Majesty's Treasury

(a) S.I. 2018/1149.

SCHEDULE

Article 8

1.—(1) The Treasury may, in writing, request a person to provide information or produce documentation to them which they may reasonably need for the purpose of ascertaining whether an offence has been committed under this Order.

(2) The request may be made by the Treasury or by a person authorised by the Treasury.

(3) Any person to whom a request is made under sub-paragraph (1) must comply with it within 14 days and in such manner as may be specified in the request.

2. A relevant institution must disclose information to the Treasury as soon as practicable if the conditions in paragraph 3 are satisfied.

3.—(1) The conditions are that—

(a) the relevant institution knows or suspects, or has grounds for knowing or suspecting, that a specified person—

(i) is or has been a customer of the institution at any time since this Order came into force, or

(ii) is a person with whom it has dealings in the course of its business or has had such dealings at any time since this Order came into force;

(b) the information—

(i) on which the knowledge or suspicion of the relevant institution required to disclose is based, or

(ii) which gives grounds for the knowledge or suspicion,

came to the relevant institution in the course of a business in the regulated sector.

(2) For the purpose of this paragraph, Schedule 3A to the Terrorism Act 2000(a) is to have effect for the purpose of determining what is a business in the regulated sector.

4.—(1) Disclosure of information in accordance with this Schedule is not to be taken to breach any restrictions on the disclosure of information (however imposed).

(2) But nothing in this Schedule authorises a disclosure that—

(a) contravenes the data protection legislation, or

(b) is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016(b).

(3) Until the repeal of Part 1 of the Regulation of Investigatory Powers Act 2000(c) by paragraph 54 of Schedule 10 to the Investigatory Powers Act 2016 is fully in force, sub-paragraph (2)(b) has effect as if it included a reference to that Part.

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

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

(a) 2000 c.11. Schedule 3A was inserted by paragraph 5(6) of Schedule 2 to the Anti-terrorism, Crime and Security Act 2001 c.24.

(b) 2016 c.25. Parts 1 to 7 were amended by the Policing and Crime Act 2017 (c.3), section 33(9), Schedule 9, Data Protection Act 2018 (c.12), section 211(1)(a), Schedule 19, the Counter-Terrorism and Border Security Act 2019 (c.3), section 23, Schedule 4, the Crime (Overseas Production Orders) Act 2019, section 16, S.I. 2017/730, S.I. 2018/1123, S.I. 2018/1310, S.I. 2019/419 and S.I. 2019/939.

(c) 2000 c.23. There are amending instruments to Part 1 of this Act which are not relevant to these Regulations.

(6) This Schedule does not limit the powers of the Treasury to impose conditions in connection with the discharge of their functions under article 6.

(7) In this Schedule —

“the data protection legislation” has the same meaning as in the Data Protection Act 2018(a) (see section 3 of that Act);

“privileged information” means information with respect to which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.

5.—(1) This Schedule does not require any person to provide information or produce documentation which is privileged.

(2) Information and documentation is privileged if the person asked to provide or produce it would be entitled to refuse to do so on grounds of legal professional privilege in proceedings in the High Court or (in Scotland) on grounds of confidentiality of communications in proceedings in the Court of Session.

(3) But information or documentation held with the intention of furthering a criminal purpose is not privileged.

6. A person (“P”) who—

- (a) fails without reasonable excuse to provide information, or to produce a document, in response to a requirement in this Schedule;
- (b) provides information, or produces a document, which P knows is false in a material particular in response to a requirement in this Schedule;
- (c) recklessly provides information, or produces a document, which is false in a material particular in response to a requirement in this Schedule;
- (d) fails without reasonable excuse to disclose information as required under paragraph 2,

is guilty of an offence.

7.—(1) The Treasury may disclose any information given or documentation produced under this Order (including any copy or extract made of any such document)—

- (a) to a police officer;
- (b) to any person holding or acting in any office under or in the service of—
 - (i) the Crown in right of the Government of the United Kingdom,
 - (ii) the Crown in right of the Scottish Government, the Northern Ireland Executive or the Welsh Government,
 - (iii) the States of Jersey, Guernsey or Alderney or the Chief Pleas of Sark,
 - (iv) the Government of the Isle of Man, or
 - (v) the Government of any British overseas territory;
- (c) to any law officer of the Crown for Jersey, Guernsey or the Isle of Man;
- (d) to the Scottish Legal Aid Board;
- (e) to the Financial Conduct Authority, the Prudential Regulation Authority, the Bank of England, the Jersey Financial Services Commission, the Guernsey Financial Services Commission or the Isle of Man Financial Services Authority;
- (f) to any other regulatory body.

(2) The purpose of a disclosure referred to in sub-paragraph (1) is limited to the taking of any action with a view to instituting, or otherwise for the purposes of, any proceedings—

- (a) in the United Kingdom, for an offence under this Order, or

(a) 2018 c.12.

(b) in any of the Channel Islands, the Isle of Man or any British overseas territory, for an offence under a similar provision in any such jurisdiction.

(3) The Treasury may disclose any information obtained by them pursuant to this Order to any person 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.

(4) In sub-paragraph (3) “in their own right” means not merely in the capacity as a servant or agent of another person.

8. Where a person is convicted of an offence under paragraph 6 of this Schedule the court may make an order requiring that person, within such period as may be specified in the order, to give the requested information or to produce the requested document.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under the Anti-terrorism, Crime and Security Act 2001 (“the Act”) (c.24) to impose a freeze on funds in relation to Andrey Lugovoy (AL) and Dmitri Kovtun (DK). By virtue of section 8 of the Act, this Order expires at the end of the period of two years beginning with the day on which it is made.

Article 3 provides that a specified person may request the reason why they are specified.

Article 4 prohibits any person from making funds available to or for the benefit of AL or DK. It also makes provision prohibiting anyone, including AL and DK, from dealing with funds owned, controlled or held by AL or DK.

Article 5 makes it an offence to breach the prohibition on making funds available or to engage in activity knowing or intending that it will enable or facilitate the commission of such an offence, subject to a defence based on no knowledge or reasonable suspicion of the relevant circumstances.

Article 6 provides for the Treasury to be able to grant licences to disapply the prohibitions and article 7 makes provision in relation to licensing procedure.

Article 8 gives effect to the Schedule which makes provision about information and disclosure of information.

Article 9 sets the penalties for offences under the Order, article 10 makes provision relating to criminal proceedings and article 11 relates to offences by bodies corporate and Scottish partnerships.

Article 12 makes provision about the service of notices.

Article 13 makes provision for supplemental amendments arising from this Order.

A full impact assessment has not been prepared for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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