

CAYMAN ISLANDS



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STATUTORY INSTRUMENTS

2005 No. 1461

**THE DEMOCRATIC REPUBLIC OF THE CONGO
(UNITED NATIONS SANCTIONS) (OVERSEAS
TERRITORIES) ORDER 2005**

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2005 No. 1461

UNITED NATIONS

**The Democratic Republic of the Congo (United Nations Sanctions) (Overseas
Territories) Order 2005**

Made 7th June 2005

Laid before Parliament 8th June 2005

Coming into force 9th June 2005

At the Court at Buckingham Palace, the 7th day of June 2005

Present,

The Queen's Most Excellent Majesty in Council

Whereas under Article 41 of the Charter of the United Nations the Security Council of the United Nations has, by resolution 1596 (2005) adopted on 18th April 2005, called upon Her Majesty's Government in the United Kingdom and all other States to apply certain measures to give effect to decisions of that Council in relation to the Democratic Republic of the Congo:

Now, therefore, Her Majesty, in exercise of the powers vested in Her by section 1 of the United Nations Act 1946[1], is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows-

INTRODUCTORY

Citation, commencement, extent and application

1. (1) This Order may be cited as the Democratic Republic of the Congo (United Nations Sanctions) (Overseas Territories) Order 2005 and shall come into force on 9th June 2005.

(2) If the Security Council of the United Nations takes any decision which has the effect of cancelling, extending, or suspending the operation of resolution 1596 (2005) adopted by it on 18th April 2005, in whole or in part, this Order shall cease to have effect or its operation shall be extended or suspended, in whole or in part, as the case may be, in accordance with that decision; and particulars of that decision shall be published by the Governor in a notice in the official gazette of the Territory.

(3) This Order shall extend to the territories listed in Schedule 1.

(4) Article 9 shall apply to the Sovereign Base Areas of Akrotiri and Dhekelia as set out in Schedule 2.

(5) In the application of this Order to any of the said territories the expression "the Territory" in this Order means that territory, and references to the official gazette of a Territory include a reference to any form in which official information is normally made available in that Territory.

(6) Articles 3, 4 and 5 shall apply to any person within the Territory and to any person elsewhere who is -

- (a) a British citizen, a British overseas territories citizen, a British Overseas citizen, a British subject, a British National (Overseas), or a British protected person and is ordinarily resident in the Territory; or
- (b) a body incorporated or constituted under the law of the Territory.

Interpretation

2. (1) In this Order, the following expressions have, except where otherwise expressly provided, the meanings hereby respectively assigned to them, that is to say -

"designated person" means an individual designated by the Committee established by paragraph 8 of resolution 1533 (2004) adopted by the Security Council of the United Nations on 12th March 2004;

"direction" means a direction under article 4(1);

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

"funds" means financial assets, economic benefits and economic resources of any kind, including (but not limited to) gold coin, gold bullion, cash, cheques, claims on money, drafts, money orders and other payment instruments, deposits with financial institutions or other entities, balances on accounts, debts and debt obligations; securities and debt instruments (including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures, debenture stock and derivatives contracts); interest, dividends or other income on or value accruing from or generated by assets; credit, rights of set-off, guarantees, performance bonds or other financial commitments; letters of credit, bills of lading, bills of sale; documents evidencing an interest in funds or financial resources, and any other instrument of export financing;

"Governor" means the Governor or other officer administering the Government of the Territory;

"relevant institution" means -

- (a) the person or body responsible for carrying out in the Territory the functions of a monetary authority;
- (b) any person who may lawfully accept deposits in or from within the Territory by way of business; and
- (c) any society established lawfully in the Territory whose principal purpose is the making of loans secured on residential property where such loans are funded substantially by its members;

"Supreme Court" means the court of the Territory having unlimited jurisdiction in civil proceedings.

(2) For the purpose of the definition of "relevant institution" in paragraph (1) -

- (a) the activity of accepting deposits has the meaning given in any relevant order made under section 22 of the Financial Services and Markets Act 2000[2]; and
- (b) a person is not regarded as accepting deposits by way of business if -
 - (i) he does not hold himself out as accepting deposits on a day to day basis, and
 - (ii) any deposits which he accepts are accepted only on particular occasions, whether or not involving the issue of any securities.

(3) In determining for the purposes of paragraph (2)(b)(ii) whether deposits are accepted only on particular occasions, regard is to be had to the

frequency of those occasions and to any characteristics distinguishing them from each other.

(4) For the purpose of identifying a "designated person" referred to in paragraph (1), the Governor shall cause a notice containing the names and other particulars of such designated persons to be published in the official gazette of the Territory as necessary from time to time.

MAKING FUNDS AVAILABLE AND FREEZING OF FUNDS

Making funds available to a designated person

3. Any person who, except under the authority of a licence granted by the Governor under this article, makes any funds available to or for the benefit of any designated person or a person acting on behalf of a designated person shall be guilty of an offence under this Order.

Freezing of funds

4. (1) Where the Governor has reasonable grounds for suspecting that the person by, for or on behalf of whom any funds are held is or may be a designated person or a person acting on behalf of a designated person, the Governor may by notice direct that those funds are not to be made available to any person, except under the authority of a licence granted by the Governor under article 3.

(2) A direction given under paragraph (1) shall specify either -

- (a) the period for which it is to have effect; or
- (b) that the direction is to have effect until it is revoked by notice under paragraph (3).

(3) The Governor may by notice revoke a direction given under paragraph (1) at any time.

(4) The expiry or revocation of a direction shall not affect the application of article 3 in respect of the funds in question.

(5) A notice under paragraph (1) or (3) shall be given in writing to the person holding the funds in question ("the recipient"), and shall require the recipient to send a copy of the notice without delay to the person whose funds they are, or on whose behalf they are held ("the owner").

(6) A recipient shall be treated as complying with the requirement under paragraph (5) if, without delay, he sends a copy of the notice to the owner at his

last-known address or, if he does not have an address for the owner, he makes arrangements for a copy of the notice to be supplied to the owner at the first available opportunity.

(7) Where a direction has been given under paragraph (1), any person by, for or on behalf of whom those funds are held may apply to the Supreme Court for the direction to be set aside, and on such application the court may set aside the direction.

(8) A person who makes an application under paragraph (7) shall give a copy of the application and any witness statement or affidavit in support to the Governor (and to any other person by, for or on behalf of whom those funds are held), not later than seven days before the date fixed for the hearing of the application.

(9) Any person who contravenes a direction under paragraph (1) is guilty of an offence under this Order.

(10) A recipient who fails to comply with such a requirement as is mentioned in paragraph (5) is guilty of an offence under this Order.

Facilitation of activities prohibited under article 3 or 4(9)

5. Any person who knowingly and intentionally engages in any activities the object or effect of which is to enable or facilitate the commission (by that person or another) of an offence under article 3 or 4(9) is guilty of an offence under this Order.

Failure to disclose knowledge or suspicion of measures

6. (1) A relevant institution is guilty of an offence if -
- (a) it knows or suspects that a person who is, or has been at any time since the coming into force of this Order, a customer of the institution, or is a person with whom the institution has had dealings in the course of its business since that time -
 - (i) is a designated person; or
 - (ii) is a person acting on behalf of a designated person; or
 - (iii) has committed an offence under article 3, 4(9), 5 or 7(2);and
 - (b) it does not disclose to the Governor the information or other matter on which the knowledge or suspicion is based as soon as is reasonably practicable after that information or other matter comes to its attention.

- (2) Where a relevant institution discloses to the Governor -
 - (a) its knowledge or suspicion that a person is a designated person, a person acting on behalf of a designated person, or a person who has committed an offence under article 3, 4(9), 5 or 7(2), or
 - (b) any information or other matter on which that knowledge or suspicion is based,

the disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.

GENERAL

Offences in connection with applications for licences, conditions attaching to licences, etc

7. (1) If for the purposes of obtaining any licence under this Order any person makes any statement or furnishes any document or information which to his knowledge is false in a material particular, or recklessly makes any statement or furnishes any document or information which is false in a material particular, or fails without reasonable excuse, to make a statement or furnish any document or information which may be relevant to the application for the licence, he shall be guilty of an offence under this Order.

(2) Any person who has done any act under the authority of a licence granted by the Governor under this Order and who fails to comply with any conditions attaching to that licence shall be guilty of an offence under this Order.

(3) No person shall be guilty of an offence under paragraph (2) where he proves that the condition with which he failed to comply was modified, otherwise than with his consent, by the Governor after the doing of the act authorised by the licence.

Obtaining of evidence and information

8. Schedule 3 shall have effect in order to facilitate the obtaining, by or on behalf of the Governor -

- (a) of evidence or information for the purpose of securing compliance with or detecting evasion of:
 - (i) this Order in the Territory; or
 - (ii) any law making provision with respect to any of the matters regulated by this Order that is in force in the United Kingdom, any of the Channel Islands or the Isle of Man or any British overseas territory; and

- (b) of evidence of the commission of -
 - (i) in the Territory, an offence under this Order; or
 - (ii) with respect to any of the matters regulated by this Order, an offence under the law of the United Kingdom, any of the Channel Islands or the Isle of Man or any British overseas territory.

Penalties and Proceedings

9. (1) Any person guilty of an offence under article 3, 4(9) or 5 shall be liable -

- (a) on conviction on indictment to imprisonment for a term not exceeding seven years or to a fine or to both; or
- (b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(2) Any person guilty of an offence under paragraph 3(b) or (d) of Schedule 3 shall be liable -

- (a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both; or
- (b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(3) Any person guilty of an offence under article 7(1) or (2) shall be liable -

- (a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both; or
- (b) on summary conviction to a fine not exceeding £5,000 or its equivalent.

(4) Any person guilty of an offence under article 4(10) or 6(1) or paragraph 3(a) or (c) of Schedule 3 shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £5,000 or its equivalent or to both.

(5) Where a body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part 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, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(6) Summary proceedings for an offence under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

(7) Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.

(8) No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions; but this paragraph shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

Exercise of powers of the Governor

10. (1) The Governor may, to such extent and subject to such restrictions and conditions as he may think proper, delegate or authorise the delegation of any of his powers under this Order (other than the power to give authority under Schedule 3 to apply for a search warrant) to any person, or class or description of persons, approved by him, and references in this Order to the Governor shall be construed accordingly.

(2) Any licence granted under this Order shall be in writing and may be either general or special, may be subject to or without conditions, may be limited so as to expire on a specified date unless renewed and may be varied or revoked at any time by written notice given by the Governor to each recipient of the licence.

(3) A notice under paragraph (2) may be given by post, and shall be deemed to have been given to a person if it is sent to him at his last known address.

(4) The Governor may by regulations specify in the currency of the Territory the amount which is to be taken as equivalent to sums expressed in sterling in this Order.

Miscellaneous

11. (1) Any provision of this Order which prohibits the doing of a thing except under the authority of a licence granted by the Governor shall not have effect in relation to any such thing done anywhere other than the Territory provided that it is duly authorised.

(2) A thing is duly authorised for the purpose of paragraph (1) if it is done under the authority of a licence granted in accordance with any law in force in the place where it is done (being a law substantially corresponding to the relevant provisions of this Order) by the authority competent in that behalf under that law.

A.K.Galloway

Clerk of the Privy Council

SCHEDULE 1

Article 1(3)

TERRITORIES TO WHICH THIS ORDER EXTENDS

Anguilla

Bermuda

British Antarctic Territory

British Indian Ocean Territory

Cayman Islands

Falkland Islands

Montserrat

Pitcairn, Henderson, Ducie and Oeno Islands

St. Helena and Dependencies

South Georgia and the South Sandwich Islands

The Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus

Turks and Caicos Islands

Virgin Islands

SCHEDULE 2

Article 1(4)

APPLICATION OF ARTICLE 9 TO THE SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA IN THE ISLAND OF CYPRUS

1. Any person who commits an offence under article 3, 4(9) or 5, shall be liable on conviction -

- (a) if tried on information before the Senior Judge's Court, to imprisonment for a term not exceeding seven years, or to a fine, or to both;
- (b) if tried before the Judge's Court, to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

2. Any person who commits an offence under paragraph 3(b) or 3(d) of Schedule 3, shall be liable on conviction:

- (a) if tried on information before the Senior Judge's Court, to imprisonment for a term not exceeding two years, or to a fine of any amount, or to both;
- (b) if tried before the Judge's Court, to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

3. Any person who commits an offence under article 7(1) or (2) is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding two years, or to a fine, or to both.

4. Any person who commits an offence under article 4(10) or 6(1) or paragraph 3(a) or (c) of Schedule 3, is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding three months, or to a fine not exceeding £5,000 or its equivalent, or to both.

5. Where a body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part 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, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

6. Proceedings for a misdemeanour under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

7. Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.

8. No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions, but this paragraph shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

SCHEDULE 3

Article 8

EVIDENCE AND INFORMATION

1. (1) Without prejudice to any other provision of this Order, or any provision of any other law, the Governor may request any person in or resident in the Territory to furnish to him any information in his possession or control, or to produce to him any document in his possession or control, which he may require for the purpose of securing compliance with or detecting evasion of this Order; and any person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) Nothing in the foregoing sub-paragraph shall be taken to require any person who has acted as counsel or solicitor for any person to furnish or produce any privileged information or document in his possession in that capacity.

(3) Where a person is convicted under paragraph 3(a) of this Schedule of failing to furnish information or produce a document when requested so to do under this paragraph, the court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the document.

(4) The power conferred by this paragraph to request any person to produce documents shall include power to take copies of or extracts from any document so produced and to request that person, or, where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any of them.

(5) The furnishing of any information or the production of any document under this paragraph shall not be treated as a breach of any restriction imposed by statute or otherwise.

2. No information furnished or document produced (including any copy or extract made of any document produced) by a person in pursuance of a request made under this Schedule shall be disclosed except -

- (a) with the consent of the person by whom the information was furnished or the document was produced or the person from whom the document was seized; provided that a person who has obtained information or is in the possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this sub-paragraph but such consent may instead be given by any person who is entitled to that information or to the possession of that document in his own right; or
- (b) to any person who would have been empowered under this Schedule to request that it be furnished or produced, or to any person holding or acting in any office under or in the service of -
 - (i) the Crown in respect of the Government of the United Kingdom,
 - (ii) the Government of the Isle of Man,
 - (iii) the States of Guernsey or Alderney or the Chief Pleas of Sark,
 - (iv) the States of Jersey, or
 - (v) the Government of any British overseas territory; or
- (c) on the authority of the Governor, to any organ of the United Nations or to any person in the service of the United Nations or of the Government of any country for the purpose of assisting the United Nations or that Government in securing compliance with or detecting evasion of measures in relation to The Democratic Republic of the Congo decided upon by the Security Council of the United Nations; or
- (d) with a view to the institution of, or otherwise for the purposes of any proceedings -
 - (i) in the Territory, for an offence under this Order; or

- (ii) for any offence under the law making provision with respect to such matters of the United Kingdom, any of the Channel Islands, the Isle of Man or any British overseas territory.

3. Any 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 made under this Schedule by any person who is empowered to make it; or
- (b) furnishes any information or produces any document which to his knowledge is false in a material particular or recklessly furnishes any document or information which is false in a material particular to such a person in response to such a request; or
- (c) otherwise wilfully obstructs any person in the exercise of his powers under this Schedule; or
- (d) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,

shall be guilty of an offence under this Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the United Nations Act 1946, applies to each of the territories specified in Schedule 1. The instrument gives effect in part to Resolution 1596 (2005) adopted by the Security Council of the United Nations on 18th April 2005.

UNSCR 1596 (2005) amongst other things imposes financial sanctions against persons designated as acting in violation of the arms embargo by the Sanctions Committee established by Resolution 1533 (2004).

Notes:

[1] 1946 c. 45.

[2] 2002 c.8.